

FURTHER RETURN

(33b)

To an ADDRESS of the HOUSE OF COMMONS dated the 6th February, 1893, for a copy of the judgment of the Judicial Committee of Her Majesty's Privy Council in the appealed case of Barrett *vs.* the City of Winnipeg, commonly known as the "Manitoba School Case;" also copy of factums, reports and other documents in connection therewith.

By order.

JOHN COSTIGAN,

Secretary of State.

OTTAWA, 20th February, 1893.

RECORD OF PROCEEDINGS

Before the Judicial Committee of the Privy Council, and the cases of the Appellants and Respondent in "Barrett vs. the City of Winnipeg" (the Manitoba School Case), and Record of Proceedings and the Appellants' and the Respondent's cases in Logan vs. the City of Winnipeg.

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IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE CITY OF WINNIPEG

AND

JOHN KELLY BARRETT

*Appellants,**Respondent.*

RECORD OF PROCEEDINGS.

"B."

IN THE SUPREME COURT OF CANADA.

In the Matter of an Application to quash By-laws 480 and 483 of the City of
Winnipeg.

APPELLANT'S FACTUM.

John Kelly Barrett (Applicant)

Appellant,

and

The City of Winnipeg (Respondents)

Respondents.

1. The question at issue upon this appeal is whether the Manitoba Public School Act, 53 Vict., c. 38, 1890, is void, as offending against the following provision in the Constitutional Act of Manitoba, 33 Vict., c. 3 (Dom. 1870), "Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union."

The appellant contends that the school law offends against this provision in its effects on the Roman Catholics of Manitoba. The question arises upon an application in the court of queen's bench to quash certain assessment by-laws of the city of Winnipeg made under the school law. Mr. Justice Killam dismissed the application; and the full court in term confirmed his judgment, Mr. Justice Dubuc dissenting.

2. In attempting to construe the provision in question, it is proper to compare it with the provision *in pari materia* of "The British North America Act, 1867," and to examine into the history of the legislation.

See "Rex vs. Loxdale," 1 Burr, p. 447.

"When there are different statutes *in pari materia*, though made at different times, or even expired, and not referring to each other, they shall be taken and construed together as one system, and as explanatory to each other."

See also "Hawkins vs. Gathercole," 6 De G. M. and G. 1.

See also "Maxwell on Statutes," 40, 41.

See also "Wilberforce on Statutes" 260-4.

3. For convenience there are set out below in parallel columns the corresponding paragraphs of "The British North America Act, 1867," and "The Manitoba Constitutional Act."

Manitoba School Acts.

BRITISH NORTH AMERICA ACT.

In and for the province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union.

(2.) All powers, privileges, and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the queen's Roman catholic subjects shall be and the same are hereby extended to the dissentient schools of the queen's protestant and Roman catholic subjects in Quebec.

(3.) Where in any province a system of separate or dissentient schools exists by law at the union, or is thereafter established by the legislature of the province, an appeal shall lie to the governor-general in council from an act or decision of any provincial authority affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education.

(4.) In case any such provincial law as from time to time seems to the governor-general in council requisite for the due execution of the provisions of this section is not made, or in case any decision of the governor-general in council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the governor-general in council under this section.

MANITOBA ACT.

In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

(2.) An appeal shall lie to the governor-general in council from any act or decision of the legislature of the province or of any provincial authority affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education.

(3.) In case any such provincial law as from time to time seems to the governor-general in council requisite for the due execution of the provisions of this section is not made, or in case any decision of the governor-general in council on any appeal under this section is not duly executed by the proper authority in that behalf, then and in every such case, and as far only as the circumstances of each case may require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the governor-general in council under this section.

4. Some years prior to 1867, when "The British North America Act" was passed, the parliament of the late province of Canada had passed a separate school law for Upper Canada, which was understood to be a final settlement of a long standing subject of contention. The understanding preceding the addresses on which "The British North America Act" was passed, was, that the privileges granted by this separate school law to the Roman catholic minority of Upper Canada should be secured to them, and that like privileges should be granted and secured to the protestant minority of Lower Canada. It had been intended that the latter privileges should be granted by legislation of the provincial parliament before confederation, and that the privileges so granted to the minorities in both Upper and Lower Canada should be secured by an identical process in the Confederation Act. The suggested provincial legislation failing, the clauses of "The British North America Act" above set out were moulded to accomplish the desired object by means of that act itself.

5. It will be observed that sub-section 1 of the clause of "The British North America Act" deals only with rights or privileges had by law at the union. Shortly after confederation a question arose as to the effect of this provision when applied to the state of things existing in New Brunswick at the union. In the session of the New Brunswick legislature of 1869 a school bill was introduced by the government of the day; and it was reintroduced in 1870, and debated at great length in March and April of that year, the Roman catholic minority of New Brunswick asserting that the privileges which in practice the Roman catholics had before the union in connection with denominational schools were theirs by law within the meaning of "The British North America Act," and therefore could not be, as it was alleged they were being, violated by the proposed legislation; while the protestant majority asserted, and the proposed legislation was based on, the view that such privileges were not had by law, but only by practice, and therefore were not protected from infringement by the provision.

6. It was under these circumstances that "The Manitoba Constitutional Bill" was, on the 2nd of May 1870, introduced into the Canadian house of commons, and it became an act on the 12th of that month. The appellant contends that the addition in the Manitoba Act to the words "by law" of the words "or practice" contained in the definition of the protected rights or privileges must be taken to have regard to the existing state of things in the territory then being formed in the province of Manitoba, and to the difficulties likely to arise there, as developed by the controversy in New Brunswick; and that the obvious object of the parliament of Canada, to be if possible effectuated by the courts, was to extend the security for privileges so as to cover the *status quo*, whether that *status quo* existed under the authority of law or that of practice only.

7. What, then, was the *status quo*? The affidavit of Archbishop Taché shows that:—

"Roman catholic schools have always formed an integral part of the work of the Roman catholic church. That church has always considered the education of the children of Roman catholic parents as coming peculiarly within its jurisdiction. The school, in the view of the Roman catholics, is in a large measure the children's church, and wholly incomplete and largely abortive if religious exercises be excluded from it. The church has always insisted upon its children receiving their education in schools conducted under the supervision of the church, and upon them being trained in the doctrines and faith of the church. In education, the Roman catholic church attaches very great importance to the spiritual culture of the child, and regards all education unaccompanied by instruction in its religious aspect as possibly detrimental and not beneficial to children. With this regard the church requires that all teachers of children shall not only be members of the church, but shall be thoroughly imbued with its principles and faith; shall recognize its spiritual authority and conform to its directions. It also requires that such books be used in the schools with regard to certain subjects as shall combine religious instruction with those subjects, and this applies peculiarly to all history and philosophy."

This affidavit further shows that:—

"Prior to the passage of the act of the dominion of Canada passed in the thirty-third year of the reign of her majesty Queen Victoria, chapter 3, known as the Manitoba Act, and prior to the order in council issued in pursuance thereof, there existed in the territory now constituting the province of Manitoba a number of effective schools for children. These schools were denominational schools, some of them regulated and controlled by the Roman catholic church, and others by various protestant denominations.

"The means necessary for the support of the Roman catholic schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools, and the rest was paid out of the funds of the church, contributed by its members.

"During the period referred to, Roman catholics had no interest in or control over the schools of the protestant denominations, and the members of the protestant denominations had no interest in or control over the schools of Roman catholics.

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There were no public schools in the sense of state schools. The members of the Roman catholic church supported the schools of their own church for the benefit of the Roman catholic children, and were not under obligation to and did not contribute to the support of any other schools.

"In the matter of education, therefore, during the period referred to, Roman catholics were as a matter of custom and practice separate from the rest of the community, and their schools were all conducted according to the distinctive views and beliefs of Roman catholics as herein set forth."

8. Shortly after the passing of "The Manitoba Constitutional Act" in the year 1871, the local legislature of Manitoba passed a school law, by which and its amendments educational matters were, so far as the questions now in issue are concerned, substantially regulated until 1890, when the act now impeached was passed. The question whether this intermediate law violated the rights of the Roman catholics was never tested in the courts. But its bearing is described by Mr. Chief Justice Taylor in his judgment in the present case, as follows:—"Under that earlier law there was one board of education, which for certain purposes acted as a united board, but which was also divided into two sections, a protestant section, consisting of all the protestant members, and a Roman catholic section, consisting of the Roman catholic members. The school districts throughout the province were divided into protestant and catholic. The protestant schools were under the control of the protestant section of the board, and the trustees of these schools were elected by the protestant ratepayers. The Roman catholic section of the board had in like manner entire control of the catholic schools, and the catholic ratepayers elected the trustees. There was also one superintendent of education for the protestant schools and another for the catholic schools. The law also provided for levying the taxes for the support of schools in protestant school districts upon the property of protestants alone, and in Roman catholic school districts upon Roman catholics only. Provision was also made for apportioning taxes derived from the property of corporations, or of persons who could not be considered to belong to either body. The grant made annually by the legislature for educational purposes was apportioned between the two sections of the board for distribution among the schools under the charge of each respectively."

9. By the School Law of 1890, now attacked, all the former statutes were repealed. Its practical effect may be said to be to abolish all provisions for Roman catholic schools, and to continue the former protestant schools under the name of public schools; for while some changes in methods of government are provided for, the new schools are substantially identical with those formerly established by protestants under the repealed law. Such inadequate provision as is made for religious exercises requires (as the divisions of protestants into numerous denominations necessitates) that the exercises should be of an unsectarian character, and it is thus diametrically opposed to the principles and practice of the Roman catholic church. This provision being accepted by the protestants, and satisfactory to them as a whole, the schools may be not unfairly described as protestant schools, in the sense that they conform to the protestant, and do not conform to the Roman catholic principles and practices in education.

10. These schools, being the only ones established under and recognized by the law, are to be maintained under that law at the cost of the whole population, Roman catholic as well as protestant; and the assessment by-laws, which are objected to, provide for the levying of rates upon the whole population, including the Roman catholics, for the maintenance of such schools in Winnipeg. The Roman catholic church, as shown by the eighth paragraph of the affidavit of Archbishop Taché, "Regards the schools provided for by 'The Public Schools Act' as unfit for the purpose of educating their children, and the children of Roman catholic parents will not attend such schools. Rather than countenance such schools Roman catholics will revert to the system of operation previous to the Manitoba Act, and will establish, support, and maintain schools in accordance with their principles and faith as before mentioned."

11. Under these circumstances it is that the appellant contends that the school law of 1890 does prejudicially affect rights or privileges in respect to denomina-

tional schools, which the class of persons called Roman catholics had by law or practice in the province at the union. At the union, Roman catholics had by practice the right to support their own denominational schools, at their own charge, for the purpose of instructing their own children, separate from those of the other denominations in the community, free from all charge in respect of the support of schools for or used by any other denomination. At the union, Roman catholics were in practice enjoying and acting upon these rights. By the law impeached, the Roman catholics are compelled to bear a ratable share of the charge for the schools thereunder established, schools which are not denominational, not Roman catholic, not separate, and of which Roman catholics cannot conscientiously avail themselves; while these schools are under the name of "public," substantially protestant, and are at any rate accepted and used by, and satisfactory to, the various denominations of protestants.

12. The Roman catholics being obliged to re-establish and maintain separate and denominational schools according to the practice at the union, are thus prejudicially affected by the change, in being compelled first of all to pay the whole cost of those denominational schools, and secondly, to bear a ratable proportion of the charge for the so-called public schools of which they can and do make no use. This change does not merely prejudicially affect the Roman catholics in their purse, but (tending, as it must, to increase very greatly the burden of Roman catholics in connection with education, while it diminishes those of the protestant denominations) difficulties are thrown in the way of efficient and wide-spread Roman catholic denominational education in schools most prejudicial to that body. It is therefore obvious that they are prejudicially affected within the meaning of the provision.

For these reasons the appellant contends that the appeal should be allowed and the by-laws quashed, with costs.

JOHN S. EWART,

Counsel for Appellant.

"C."

IN THE SUPREME COURT OF CANADA.

Appeal from the Court of Queen's Bench for Manitoba.

In the Matter of an Application to quash By-laws 480 and 483 of the City of Winnipeg.

RESPONDENTS' FACTUM.

John Kelly Barrett (Applicant)

and

The City of Winnipeg (Respondents)

Appellant

Respondents.

This is an application to quash two by-laws of the city of Winnipeg, numbered 480 and 483, on the ground "That, because by the said by-laws, the amounts to be levied for school purposes for the protestant and Roman catholic schools are united, and one rate levied upon protestants and Roman catholics alike for the whole sum."

The application is made under section 258 *et seq.*, of "The Municipal Act" of 1890, of the province of Manitoba, and raises the question as to the legality, or illegality, of "The Public Schools Act," chapter 38 of 53 Vict., Statutes of Manitoba.

The first legislation in Manitoba, for the establishment of a public school system, was passed in the year 1871 (34 Vict., c. 12), whereby a board of education, composed of not less than 10 nor more than 14 persons, was established, one-half of whom were protestants and one-half catholics. Each section of the board had a

separate superintendent, and, amongst other powers, had under its control and management the "discipline" of the schools of the section, and the prescribing of such books as had reference to religion or morals. The moneys appropriated by the legislature for common school education were, after deducting the expenses of the board, and superintendents' salaries, to be "appropriated to the support and maintenance of common schools, one moiety thereof to the support of protestant schools, and the other moiety to the support of the catholic schools" (section 13).

By subsequent legislation, enacted at various times up to the passage of "The Public Schools Act" (53 Viet., c. 38), the powers of the protestant and catholic sections of the board of education were enlarged, whereby the entire control and management of the schools, their general government and discipline, were delegated to the section of the board to which the school belonged. Each section had power to select all the books, maps, and globes to be used in the schools under its control, and to approve of the plans for the construction of school houses, "Provided, however, that in the case of books having reference to religion and morals, such selection by the catholic section of the board shall be subject to the approval of the competent religious authority." See Man. Stat., 34 Viet., c. 12; ditto, 36 Viet., c. 22; ditto, 39 Viet., c. 1; ditto, 42 Viet., c. 2; ditto, 44 Viet., c. 4.

By the act respecting the department of education (53 Viet., c. 37) and by "The Public Schools Act" (53 Viet., c. 38), all prior legislation as to schools and education in Manitoba was repealed, and a department of education created, to consist of the executive council or a committee thereof, which, with an advisory board, to be elected in the manner prescribed by the act, practically replaced the old board of education. It was further provided that all public schools in the province were to be free schools (section 5), that all religious exercises in the public schools should be conducted according to the regulations of the advisory board (section 6), and that, except as above, no religious exercises were to be allowed in the schools which were declared to be "entirely non-sectarian" (section 8).

Power was given to municipalities to levy on the taxable property in each school district the sum required by such district, in addition to the legislative and municipal grants (section 90), and in cities, towns, and villages the municipal councils are to "levy and collect upon the taxable property within the municipality, in the manner provided in this act and in the municipal and assessment acts, such sums as may be required by the public school trustees for school purposes" (section 92), and it was declared that the taxable property in a municipality for school purposes was to include all property liable to municipal taxation, and also all property exempt by the council from municipal and not from school taxation (section 93).

"The British North America Act, 1867," enacted, section 92, "In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say . . . (2.) Direct taxation within the province in order to the raising of a revenue for provincial purposes . . . (8.) Municipal institutions in the province"; and by section 93, "In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:—(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union."

By the 22nd section of the Manitoba Act, "In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:—(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union."

Prior to the province of Manitoba entering confederation, the schools then in existence were purely private schools, and were not in any way subject to public control, nor did they receive public support. No school taxes were levied or collected by any authority, and whatever contributions were made for the support of said schools were purely voluntary. See affidavit, Alexander Polson, affidavit, John Sutherland, and affidavit, Archbishop Taché.

The respondents submit that the words "law or practice," as used in sub-section 1 of section 22 Manitoba Act, can only mean some binding rule or obligation to

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which the inhabitants of the province were at the date of the union committed. There is no evidence showing such to have been the case. *Ex parte Renaud*, 1 Pugsley, N. B. R., 273; S. C., 2, Cart., Cas. 445.

The "right or privilege" with respect to denominational schools at the date of the union was, according to the affidavit of his grace Archbishop Taché, the right to establish denominational schools supported by private contributions of parents or by the funds of the church. This right has in no way been interfered with by "The Public Schools Act." Roman catholics are still entitled, notwithstanding the abolition of separate schools, to establish and maintain denominational schools the same as before the union.

The Manitoba Act (section 22) contemplated the establishment of a system of free undenominational public schools, and the maintenance of the same by grants of provincial funds or by direct taxation, or both. The enactment of "The Public Schools Act" was therefore within the powers granted to the provincial legislature by the Manitoba Act, and was not an interference with the rights and privileges with respect to "denominational" schools.

The respondents contend that the provincial legislature was intended to have power to provide against popular ignorance as an evil, and for that purpose to expend the public moneys, and, if necessary, to levy taxes. That certain individuals in the community, who voluntarily contribute to and maintain denominational schools would have to pay the rates imposed by the legislature for the support of free schools, is too indirect and remote an effect to bring it within the act as an invasion of their rights and privileges thereunder.

The establishment and maintenance of private denominational schools by certain individuals or classes in the community, prior to and at the time of the union, was not a "right or privilege" within the ordinary meaning of these words as used in the Manitoba Act. "Bac. Abrid.," Vol. 8, p. 158; Com. Dig. (*Sic.*); "McKeddy's Roman Law," Section 189; "Campbell v. Spottiswoode," 3 B. and S., 769; "Fraser v. Mitchell," L. R. 7, Q. B., 690. See definitions in "Bouvier's Law Dictionary"; ditto "Browne's Law Dictionary"; ditto "Wharton's Law Lexicon"; ditto Imperial and Webster's Dictionaries.

"A."

IN THE SUPREME COURT OF CANADA.

FACTUM OF CASE ON APPEAL TO THE SUPREME COURT OF CANADA.

NOTE.—See *Sessional Paper No. 63b*, 1891.

D.

ORDER OF SUPREME COURT OF CANADA ALLOWING APPEAL, DATED 28TH OCTOBER, 1891.

E.

REASONS OF JUDGES OF THE SUPREME COURT OF CANADA.

NOTE.—See *Sessional Paper No. 46*, 1892.

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IN THE SUPREME COURT OF CANADA.

REGISTRAR'S CERTIFICATE VERIFYING TRANSCRIPT RECORD.

In the Matter of an Application to quash By-laws 430 and 483 of the
City of Winnipeg.

Between

John Kelly Barrett (Applicant) - - - *Appellant.*

and

The City of Winnipeg - - - - *Respondents.*

I, Robert Cassels, registrar of the supreme court of Canada, hereby certify that the printed document annexed hereto marked A is a true copy of the original case filed in my office in the above appeal; that the printed documents also annexed hereto marked B and C are true copies of the factums of the appellant and respondents respectively deposited in said appeal; and that the document marked D, also annexed hereto, is a true copy of the formal judgment of this court in the said appeal; and I further certify that the document marked E, also annexed hereto, is a copy of the reasons for judgment delivered by the judges of this court when rendering judgment, as certified by George Duval, Esq., the official reporter of this court.

Dated at Ottawa, this 28th day of December, A.D. 1891.

(Seal.)

ROBERT CASSELS,

Registrar.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CANADA.

BETWEEN

THE CITY OF WINNIPEG - - - - - *Appellants*

AND

JOHN KELLY BARRETT - - - - - *Respondent.*

CASE OF THE APPELLANTS.

1. This is an appeal from a judgment of the supreme court of Canada pronounced on the 28th October, 1891, reversing a judgment of the court of queen's bench for the province of Manitoba pronounced on the 2nd February, 1891.

2. The respondent, John Kelly Barrett, applied to a judge of the court of queen's bench for Manitoba, under section 258 of the Manitoba Municipal Act (53 Vict., cap. 51), to quash two by-laws of the appellants, the city of Winnipeg, being by-laws numbered 480 and 483, for "illegality," and upon the ground, "That because by the said by-laws the amounts to be levied for school purposes for the protestant and Roman catholic schools are united, and one rate levied upon protestant and Roman catholics alike for the whole sum."

3. The application was heard before Mr. Justice Killam, who dismissed it, his reasons for doing so being reported in 7 "Manitoba Law Reports," page 273, and also printed in the Record.

4. From this judgment the respondent appealed to the court of queen's bench for Manitoba. The appeal was heard before the full court, consisting of the chief justice, Mr. Justice Bain, and Mr. Justice Dubue, and was dismissed by that court, Mr. Justice Dubue dissenting, the reasons of their lordships being reported in the same number of the Manitoba Law Reports, commencing at page 304, and also printed in the Record.

5. From this judgment the respondent appealed to the supreme court of Canada, and the appeal was allowed by that court, and an order made quashing the said by-laws, the reasons for the judgment of their lordships being printed in the Record.

6. The two by-laws in question were passed for levying a rate for municipal and school purposes in the city of Winnipeg for the year of 1890. The principal by-law, viz., by-law 480, recited amongst other matters the aggregate amount necessary to be raised to meet the interest for debentures and for the ordinary current municipal and school purposes without distinction and the total value of the ratable property in the city as shown by the last revised assessment rolls, and enacted that there should be raised, collected, and levied a rate of 2 cents on the dollar upon the whole assessed value of the real and personal property in the city according to such rolls for meeting the expenditure mentioned. The by-law is set out in full in the Record.

7. By-law 483 amended the former by-law. It recited that the property of certain corporations was liable only for school rates, and that it was desirable to distinguish the rates providing for city schools, but so that the total several rates should not exceed 2 cents on the dollar, and it amended the former by-law so as to make the rate 15½ mills on the dollar for interest on debentures and for the ordinary current municipal expenditure for the year, and 4½ mills for school purposes also for the year.

8. The substantial question in the appeal is whether the Public Schools Act, passed by the legislature of the province of Manitoba in 1890 (53 Vict., cap. 38),

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Manitoba), under the authority of which the said by-laws were passed, is within the power of that legislature to enact. This act established one system of public schools throughout the province and abolished all the laws regarding public schools which had theretofore been passed and were then existing. The respondent contends that the act is *ultra vires*, and that the by-laws in question which levied a rate for school purposes pursuant to it on all the ratepayers alike are consequently illegal, his ground for so contending being that the act, as he alleges, offends against the following provision contained in "The Manitoba Act," under which the province was admitted into confederation (33 Viet., cap. 3, Dominion, 1870):—

"21. In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:

"(1.) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools, which any class of persons have by law or practice in the province at the union."

9. The respondent filed, in support of the application, his own affidavit, which stated that he was a ratepayer and a resident of the city of Winnipeg, and a member of the Roman catholic church; and that the effect of these by-laws was that one rate was levied upon all protestant and Roman catholic ratepayers, in order to raise the amount required for school purposes, and he claimed that the result to individual ratepayers was "that each protestant will have to pay less than if he were assessed for protestant schools alone, and each Roman catholic would have to pay more than if he were assessed for Roman catholic schools alone."

10. An affidavit of his grace the archbishop of St. Boniface was also filed by the respondent, and several affidavits in answer were filed on behalf of the appellants. The material facts relied upon by the respondent are set out in the affidavit of the archbishop as follows:

"(a) Prior to the passing of the Manitoba Act, and prior to the order in council issued in pursuance thereof, there existed in the territory now constituting the province of Manitoba a number of effective schools for children.

"(b) These schools were denominational schools, some of them being regulated and controlled by the Roman catholic church, and others by various protestant denominations.

"(c) The means necessary for the support of Roman catholic schools were supplied, to some extent, by school fees, paid by some of the parents of the children who attended the schools, and the rest were paid out of the funds of the church, contributed by its members.

"(d) During the period referred to Roman catholics had no interest in or control over the schools of the protestant denominations, and the members of the protestant denominations had no interest in or control over the schools of the Roman catholics. There were no public schools in the sense of state schools. The members of the Roman catholic church supported the schools of their own church for the benefit of the Roman catholic children, and were not under obligation to and did not contribute to the support of any other schools.

"(e) The Roman catholic schools were all conducted according to the distinctive views and beliefs of Roman catholics."

11. The affidavits filed by the appellants, the city of Winnipeg, showed that prior to the province of Manitoba entering confederation the schools then in existence were merely private schools, and were in no way subject to public control, and did not receive public support; that no school taxes were levied or collected by any authority, and whatever contributions were made for the support of said schools were purely voluntary.

12. The province of Manitoba became one of the provinces of the dominion of Canada on 15th July, 1870, under the following circumstances:

"(a) Prior to the union the district comprised in the province of Manitoba was a portion of Rupert's Land, and was a part of the territory granted to the Hudson's Bay Company on 2nd May, 1670, by King Charles II.

(b) Prior to 1870 a number of white settlers and half-breeds had established themselves along the banks of the Red and Assiniboine rivers, in what was known as the Red River Settlement, all of which was included in the new province.

(c) By the British North America Act (Imperial Statute 30 and 31 Vict., cap. 3) the old provinces of Upper and Lower Canada, Nova Scotia and New Brunswick were confederated into the dominion of Canada.

(d) On the 23rd of June, 1870, an imperial order in council was passed admitting Manitoba into confederation, the same coming into force on the 15th July, 1870, from which last mentioned date Manitoba has been one of the provinces of the Dominion.

(e) The Dominion Statute (32 and 33 Vict., cap. 3) commonly called "The Manitoba Act," provided for the government of the new province, and declared that the provisions of the British North America Act should, except as to those parts thereof which were in terms made or by reasonable intentment might be held to be specially applicable to or only affect one or more but not the whole of the provinces then comprising the Dominion, and except as the same might be varied by that act, be applicable to the province of Manitoba.—This act was confirmed by the imperial act (34 and 35 Vict., cap. 28.)

(f) By the British North America Act it is enacted (section 92): "In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

"(2) Direct taxation within the province, in order to the raising of a revenue for provincial purposes."

"(8) Municipal institutions in the province." And by section 93: "In and for the province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union."

(g) The provisions of section 93 of the British North America Act were varied in and by the provision hereinbefore set out in full in paragraph 8 of this case. And in addition the section 22 in sub-section (2) provides somewhat more generally for an appeal to the governor-general in council from any act or decision of the provincial legislature or authorities affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education. The provisions contained in section 92 of the British North America Act and above referred to are not altered, and apply to Manitoba.

13. The act known as the Public Schools Act, the validity of which is in question, enacts that all public schools in the province are to be free schools (section 5); that all religious exercises in the public schools shall be conducted according to the regulations of the advisory board, which is provided for (section 6); but in case the guardian or parent of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then the pupil shall be dismissed before the religious exercises take place, the time appointed for such religious exercises being just before the closing hour. All public schools are non-sectarian, and no religious exercises shall be allowed therein except as above provided. The act is not compulsory; no parent or guardian is compelled to send his child to a public school.

14. The question involved in this appeal turns largely upon the effect of the words "by law or practice" contained in section 22 of the Manitoba Act (33 Vict., cap. 3). The law in force prior to the union in the territory which now forms the province of Manitoba was the law of England as at the date of the Hudson's Bay Company's charter, viz., 2nd May, 1670, in so far as such law was applicable to the country. Roman catholics did not therefore possess any right or privilege with respect to denominational schools by law in the province at the union. The "right

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or privilege " with respect to denominational schools existing by practice at the date of the union was, as shown by the affidavits, merely the privilege to establish and maintain private schools which were supported by fees paid by the parents or guardians of the children who attended them, supplemented, it may be, by those who belonged to the Roman catholic church. This right has in no way been interfered with or "prejudicially affected" by the Public Schools Act of 1890. Roman catholics are still entitled to establish and maintain denominational schools in the same manner as before the union.

15. The appellants petitioned your majesty in council for special leave to appeal from the judgment of the said supreme court, dated the 28th October, 1891, and by an order dated the 9th May, 1892, leave to appeal was granted.

16. The appellants submit that the judgment of the supreme court of Canada should be set aside, and the judgment of the court of queen's bench for Manitoba reinstated, with their costs in the courts below, for the following amongst other

REASONS:

- (1) Because the reasons of Killam, J., Taylor, C.J., and Bain, J., are right in law and fact.
- (2) Because the provincial act respecting public schools does not affect any right or privilege with respect to denominational schools which the respondent or any class of persons had by law or practice in the province prior to the union.
- (3) Because the respondent had not, nor had the Roman catholics of the province, prior to the union any right or privileges by law in relation to the Roman catholic denominational schools.
- (4) Because the respondent had not, nor had the Roman catholics of the province, prior to the union any right or privileges by practice respecting denominational schools other than that of establishing and maintaining private schools in which the tenets of the Romish church were taught, which is in nowise interfered with by the act in question.
- (5) Because in any view the School Act does not prejudicially affect any right or privileges which the Roman catholics had respecting denominational schools in the sense in which these words have been judicially interpreted.
- (6) Because the respondent has not shown that the School Act interferes with any right or privileges which were locally enjoyed in the part of the province which is now within the limits of the city of Winnipeg.

HORACE DAVEY,
D'ALTON MCCARTHY.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE SUPREME COURT OF CANADA

BETWEEN

THE CITY OF WINNIPEG

Appellants

AND

JOHN KELLY BARRETT

Respondent.

CASE OF THE RESPONDENT.

1. This is an appeal by special leave of her majesty in council from a judgment of the supreme court of Canada ordering that certain by-laws of the city of Winnipeg should be quashed. The question at issue, which is one of great importance, is whether the Public Schools Act, 1890, (Manitoba Statute) is within the power of the provincial legislature of Manitoba. The judges of the supreme court reversing the decision of the court of queen's bench of Manitoba, unanimously held that it was not.

2. Manitoba joined the union in 1870, upon the terms of the Constitutional Act of Manitoba, 1870, 33 Vict., c. 3 (Dominion Statute). Section 22 of that act is as follows:—

" 22. In and for the province (*i. e.*, of Manitoba) the said (*i. e.*, provincial) legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

" (1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or *practice* in the province at the union:

" (2) An appeal shall lie to the governor-general in council from any act or decision of the legislature of the province or of any provincial authority affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education:

" (3) In case any such provincial law as from time to time seems to the governor-general in council requisite for the due execution of the provisions of this section, is not made, or in case any decision of the governor-general in council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then, and in every such case, and as far only as the circumstances of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section, and of any decision of the governor-general in council under this section."

3. The first sub-section of the above section, upon which the question in this case mainly turns, is identical in terms with section 93 sub-section 1 of the British North America Act, 1867, with the exception that the words "*or practice*" printed above in italics do not appear in section 93 sub-section 1 of the British North America Act, 1867. The two sections above mentioned are collocated for comparison in the Record.

4. At the date of union in 1870 there was not, nor ever had been, any state system of education in Manitoba, nor any compulsory rate or state grant for purposes of education. There was, however, and for many years previously had been, an established and recognized system of voluntary denominational education. There were in particular throughout Manitoba a number of effective Roman catholic (hereinafter called catholic) schools, at which the children of catholics attended, and where the education was under the control of the catholic church. These schools were supported partly by school fees and partly by voluntary contributions from catholics.

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In a similar way the various protestant sects supported schools of their own, which were also exclusively under their control.

5. In 1871 the legislature of Manitoba passed an act, 34 Viet., chapter 12, establishing a state system of education in the province, and in subsequent sessions other enactments dealing with the subject were passed. The legislation on the subject was codified and extended by 44 Viet., chapter 4, and subsequent modifications were introduced by 45 Viet., chapters 8 and 11; 46 and 47 Viet., chapter 46; 47 Viet., chapters 37 and 54; 48 Viet., chapter 27; 50 Viet., chapters 18 and 19; 51 Viet., chapter 31; 52 Viet., chapters 5 and 21.

6. By virtue of this legislation a board of education was established in the province appointed by the lieutenant-governor in council, of whom a certain specified proportion were protestants and a certain specified proportion were catholics. This board was divided into two sections, protestant and catholic, each section being exclusively composed of the members professing these faiths respectively, and the control of protestant schools was exclusively vested in the protestant section, while the control of the catholic schools was (subject as regards the selection of books relating to religion and morals to the control of competent catholic religious authority) exclusively vested in the catholic section. The acts then provided for the division of the province into school districts, which were styled respectively protestant and catholic school districts. It was further provided that the establishment of a school district of one denomination at a particular place should not prevent the establishment of a school district of another denomination at the same place. Provision was made for the election of school trustees of each school district, the electors being the ratepayers within such district of the religious denomination which such district bore, and the school trustees, when elected, became a corporation under the name of "The School Trustees for the Protestant (or Catholic, as the case may be) School District of

" The school trustees had power under certain conditions to levy compulsorily a rate within their district, for school purposes, but only upon ratepayers of of the religious denomination of the particular district, so that no protestant was under liability to contribute to a catholic school nor a catholic to a protestant school. Provision was further made for the division of such grants as were made by the state in aid of education between the various catholic and protestant district schools in proportion to population.

7. In 1890 (53 Viet.) the legislature of Manitoba passed two statutes relating to education. By chapter 37 a state department of education was established, together with an advisory board consisting of seven members, all appointed without reference to their creed, of whom four were appointed by the department of education and three by the teachers of the province. The advisory board so appointed was substituted for the protestant and catholic sections of the board of education previously existing, which was abolished. By chapter 38, which is the act the validity of which is now in question and which was entitled "The Public Schools Act," 1890, the previous legislation relating to public education was repealed. It was provided that existing protestant and catholic school districts should become subject to the provisions of the act, and that religious exercises in the public schools should be conducted according to the regulations of the advisory board, it being on the one hand optional upon the school trustees of each district whether any religious exercises should take place, and upon the other optional upon any parent or guardian to refuse to allow his child to attend such religious exercises. It was further provided that the schools should be entirely non-sectarian and no religious exercises should be allowed except as above provided. Subject to the control of the advisory board, the management of the school was vested in school trustees who were to be elected by the ratepayers without distinction of creed. The act further provided for the assessment by the municipal authorities upon all ratepayers within the municipality of such rates as should be necessary for the maintenance of the public schools therein. In the rural districts the amount to be assessed was a fixed sum for each school, while in the cities, towns and villages the municipal authorities were required to raise such sum as might be required by the school trustees of the district. It was provided that amongst other persons any

clergyman should be a school visitor within the place where he had pastoral charge and might examine the pupils and give advice to the teachers and pupils. Section 179 further provided that in all cases where, before the coming into operation of the act, catholic school districts had been established such catholic districts should cease to exist, and all the assets of such catholic schools should belong to and all the liabilities thereof be paid by the public school district.

8. It appeared by an affidavit of the archbishop of the Roman catholic ecclesiastical province of St. Boniface, that it was in the view of members of that church an essential element in the education of children that such education should be a religious education, and should be conducted under the supervision of the church. He stated (and it was not substantially disputed) that the schools provided by the Public Schools Act would be regarded by catholics as unfit for the education of their children, and that they could not conscientiously permit their children to attend them, and would consequently have to establish throughout the province fresh voluntary schools, conducted in accordance with the principles of their faith, and to support and maintain such schools. It would appear on the other hand that schools conducted as specified in the Public Schools Act would have the approval of certain protestant denominations in Manitoba and among others of the presbyterians, and it appears probable that such schools would be conducted mainly for the benefit of these denominations, and would be in effect their schools.

9. On the 14th and 28th July 1890, the appellants, the corporation of Winnipeg, passed two by-laws, nos. 480 and 483, sanctioning the raising of a large sum of money for the purpose, amongst others, of defraying the amount required for school expenditure under the Public Schools Act, 1890, for the public schools within the district. The amount of the said rate which was required for this purpose was a sum of 77,550 dollars, made up of a sum of 75,000 dollars, required for school purposes by the trustees of a public school within the municipality called the school trustees for the protestant school district of Winnipeg, no. 1, in the province of Manitoba, and a sum of 2,550 dollars required for similar purposes by the school trustees for the catholic school district of Winnipeg, no. 1.

10. For the purpose of obtaining a decision upon the question of the validity of said act, the respondent obtained a summons calling on the appellants to show cause why the said by-laws should not be quashed for illegality upon the ground that the amounts levied for protestant and catholic schools were therein united, and that one rate was levied upon protestants and catholics alike for the whole sum. A rate so levied would be invalid according to the education acts in force at the time of the passing of the Public Schools Act, 1890.

11. The application was heard before Killam, J., who dismissed the summons. His formal order appears at p. 23, and his reasons at pp. 24 to 38 of the Record. He held that the rights and privileges referred to in the act were those of maintaining denominational schools of having children educated in them, and having inculcated therein the peculiar doctrines of the respective denominations. He regarded the prejudice effected by the imposition of a tax upon catholics for schools to which they were conscientiously opposed as something so indirect and remote that he could not take it to be within the act.

12. The respondent appealed to the court of queen's bench of Manitoba *in banc*, composed of three judges who, after argument, dismissed the appeal, Dubuc, J., dissenting. The formal judgment appears at p. 83, the reasons of Taylor, C. J., at p. 39, of Dubuc, J., at p. 52 and of Bain, J., at p. 73 of the Record.

13. Taylor, C. J., thought that the "rights and privileges" included moral rights, and that parliament intended in fact that whatever any class of persons was, at the time of the union, in the habit or custom of doing in reference to denominational schools, should continue and should not be prejudicially affected by provincial legislation, but he held that none of these rights or privileges were in any way affected by the act. Bain, J., delivered a separate judgment but, substantially on the same grounds. Dubuc, J., held, that the right or privilege existing by practice at the date of the union, and intended to be protected, was the right of each denomination to have its denominational school with such teaching as it might think fit, and the privilege of not being compelled to contribute to other schools of which

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members of such denominations could not in conscience avail themselves, and that this right or privilege was invaded by the Public Schools Act, 1890, which was consequently *ultra vires*.

14. The respondent then appealed to the supreme court of Canada, which court, composed of five judges, after taking time for consideration, unanimously allowed the appeal. The formal order of the court appears at p. 84 of the Record, the reasons of Ritchie, C. J., with which Strong, J., agreed at pp. 85 to 91, those of Patterson, J., at pp. 91 to 96, those of Fournier, J., at pp. 96 to 108, those of Taschereau, J., at pp. 108 to 113 of the Record.

15. Ritchie, C. J., held that as catholics could not conscientiously continue to avail themselves of the public schools as carried on under the system established by the Public Schools Act, 1890, the effect of that act was to deprive them of any further beneficial use of the system of voluntary catholic schools which had been established before the union and had thereafter been carried on under the state system introduced in 1871. Patterson, J., pointed out that the words "injuriously affect" in sec. 22, sub-section 1, of the Manitoba Constitutional Act, would include any degree of interference with the rights or privileges in question, although falling short of the extinction of such rights or privileges. He held that the impediment cast in the way of obtaining contributions to voluntary catholic denominational schools by reason of the fact that all catholics would under the act be compulsorily assessed to another system of education amounted to an injurious affecting of their rights and privileges within the meaning of the sub-section. Fournier, J., pointed out that the mere right of maintaining voluntary schools if they chose to pay for them and causing their children to attend such schools could not have been the right which it was intended to reserve to catholics or other classes of persons by the use of the word "practice," since such right was undoubtedly one enjoyed by every person or class of persons by law, and took a similar view to that taken by Patterson, J. Taschereau, J., gave judgment in the same sense, holding that the contention of the appellants gave no effect to the word "practice" inserted in the section.

16. The respondent submits that the judgment appealed from is correct and should be affirmed for the following amongst other

REASONS.

1. Because the provisions of the Public Schools Act, 1890, prejudicially affect the rights and privileges of catholics in the province as they existed by law or practice at the date of the union with respect to denominational schools.
2. Because catholics cannot conscientiously permit their children to attend the public schools as constituted and carried on under the said act.
3. Because by reason of the compulsory rate levied upon catholic ratepayers in support of the public schools, material impediments are cast in the way both of subscribing and of obtaining subscriptions in support of catholic denominational schools, and of setting up and maintaining the same, and the rights and privileges of catholics in reference thereto are thereby prejudicially affected.
4. Because by the operation of the said act catholics are deprived of the system of catholic denominational schools as they existed at the date of the union, or are prejudicially affected in reference to such system.
5. Because the public schools as constituted by the said act are or may be protestant denominational schools, and catholic ratepayers are by the said act compelled to contribute thereto.
6. Because the judgments and reasons of Dubuc, J., and of the several judges of the supreme court of Canada are correct.

RICHARD E. WEBSTER.

JOHN S. EWART.

FRANCIS C. GORE.

IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF QUEEN'S BENCH OF THE PROVINCE OF MANITOBA.

BETWEEN

THE CITY OF WINNIPEG - - - - - *Appellants,*

AND

ALEXANDER LOGAN - - - - - *Respondent.*

CASE OF THE APPELLANTS.

1. This is an appeal from a judgment of the court of queen's bench for the province of Manitoba, dated the 19th day of December, 1891.

2. The respondent, Alexander Logan, applied to the chief justice of the court of queen's bench for Manitoba under section 258 of the Manitoba Municipal Act (53 Vict., cap. 51), to quash a by-law of the appellants, the city of Winnipeg, being by-law numbered 514, "for illegality," upon the grounds, "That by the said by-law the amount estimated to be levied for school expenditure is levied upon members of the church of England and all other religious denominations alike.

"That it is illegal to assess members of the church of England for the support of schools which are not under the control of the church of England, and in which there are not taught religious exercises prescribed by said church, and upon grounds appearing in affidavits and papers filed."

3. The application was by consent referred to the full court in term, and the court after argument quashed the by-law on the ground that the case could not be distinguished from the decision of supreme court in the case of *Barrett vs. Winnipeg*, which is now under appeal to her majesty in council. This case is reported in Manitoba Law Reports, vol. 8, p. 3, and the judgments are printed in the Record.

4. The substantial question in the appeal is whether the Public School Act, passed by the legislature of the province of Manitoba in 1890 (53 Vict., cap. 38, Manitoba) is within the powers of that legislature to enact. This act established one system of public schools and abolished the protestant and Roman catholic separate public schools theretofore existing. The respondent claims that the act is *ultra vires*, and that the by-law in question which levied a rate for school purposes, pursuant to the act, upon all ratepayers alike is consequently illegal, his ground for so contending being that the act, as he alleges, offends against the following provision contained in the act under which Manitoba was admitted into confederation (33 Vict., cap. 3, sec. 22, Dominion of Canada, 1870):—

"In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:

"Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union."

5. The by-law in question was passed for levying a rate for municipal and school purposes in the city of Winnipeg for the year 1891. It recited the aggregate amount necessary to be raised to meet interest for debentures and ordinary current municipal and school purposes, the total value of the ratable property in the city as shown by the last revised assessment rolls, and enacted that there should be raised, collected, and levied a rate of $15\frac{3}{10}$ mills on the dollar upon

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the whole assessed value of the real and personal property in the city according to such rolls for meeting the interest on debentures accruing due and for ordinary municipal expenditure, and a rate of $4\frac{2}{5}$ mills on the dollar on all ratable property for school expenditure for the year 1891.

6. The respondent filed in support of the application his own affidavit, which stated that he was a ratepayer and a resident of the city of Winnipeg; that he was born in 1841 within what are now the city limits, and had continuously resided therein since, is a member of the church of England, and has several children within school age.

7. Affidavits of the bishop of Rupert's Land, and of Robert Henry Hayward, also a ratepayer of Winnipeg, who objected to the public schools system, and who sent his children to a church school unsupported in any way by public funds, were also filed by the respondent; and several affidavits in answer were filed on behalf of the appellants. The material facts relied upon by the respondent are set out in the affidavit of the bishop as follows:—

(a) Prior to the passing of the act of the dominion of Canada, passed in the thirty-third year of her majesty Queen Victoria, chapter 3, known as the Manitoba Act, and prior to the order in council issued in pursuance thereof, there existed in the territory now constituting the province of Manitoba a number of effective schools for children.

(b) These schools were denominational schools, most of them being regulated and controlled by the church of England, and others by the Roman catholic church and the presbyterians. The system of schools controlled by the church of England is efficient.

(c) The means necessary for the support of schools were supplied to some extent by school fees paid by some of the parents of the children who attended the schools, and the rest was paid out of the funds of the churches.

(d) There were no public schools in the sense of state schools.

(e) The clauses of the Public Schools Act of 1890, prohibiting religious instruction and limiting religious exercises in the schools as therein provided, are unsatisfactory to the bishop.

8. The affidavits filed by the appellants, the City of Winnipeg, showed that prior to the province of Manitoba entering confederation the schools then in existence were:

Purely private schools.

In no way subject to public control.

Did not receive public support.

No school taxes were levied or collected by any authority, school board or otherwise.

There was no government or municipal grant of any kind made to schools, and whatever contributions were made for the support of said schools were purely voluntary.

9. The province of Manitoba became one of the provinces of the dominion of Canada on the 15th July, 1870, under the following circumstances:

(a) Prior to the union the district comprised in the province of Manitoba was a portion of Rupert's Land, and was part of the territory granted to the Hudson's Bay Company on 2nd May, 1670, by King Charles II.

(b) Prior to 1870 a number of white settlers and half-breeds had established themselves along the banks of the Red and Assiniboine rivers, in what was known as the Red River Settlement, all of which was included in the new province.

(c) By the British North America Act (Imperial Statute, 30 and 31 Vict., cap. 3) the old provinces of Upper and Lower Canada, Nova Scotia, and New Brunswick were confederated into the dominion of Canada.

(d) On the 23rd June, 1870, an imperial order in council was passed admitting Manitoba into confederation, the same coming into force on 15th

July, 1870, from which last-mentioned date Manitoba has been one of the provinces of the Dominion.

(e) The Dominion Statute (32 and 33 Vict., cap. 3), commonly called the Manitoba Act, provided for the government of the new province, and declared that the provisions of the British North America Act should, except as to those parts thereof which were in terms made or by reasonable intendment might be held to be specially applicable to or only affect one or more but not the whole of the provinces then comprising the Dominion, and except as the same might be varied by that act, be applicable to the province of Manitoba. This act was confirmed by the imperial act (34 and 35 Vict., cap. 28).

(f) By the British North America Act it is enacted (section 92): "In each province the legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated, that is to say:

"(2) Direct taxation within the province in order to the raising of a revenue for provincial purposes.

"(8) Municipal institutions in the province." And by section 93: "In and for each province the legislature may exclusively make laws in relation to education, subject and according to the following provisions:

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the union."

(g) The provisions of section 93 of the British North America Act are altered by section 22 of the Manitoba Act, the words 'or practice' being inserted after the words 'by-law' in the sub-section last above cited. In addition to this, the said section 22 in sub-section 2 provides somewhat more generally for an appeal to the governor-general in council from any act or decision of the provincial legislature or authorities affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education. The provisions contained in section 92 of the British North America Act and above referred to are not altered, and apply to Manitoba.

10. In the year 1890 the legislature of the province of Manitoba passed two acts in reference to education. One is the act respecting the department of education (53 Viet., cap. 37), and the other is the Public Schools Act (53 Vict., cap. 38). By these acts all prior legislation as to schools and education in Manitoba was repealed, and a department of education created, to consist of the executive council or a committee thereof, with an advisory board to be elected in the manner prescribed by the act. The Public Schools Act provides that all public schools in the province are to be free schools (section 5); that all religious exercises in the public schools shall be conducted according to the regulations of the advisory board (section (6)); but in case the guardian or parent of any pupil notifies the teacher that he does not wish such pupil to attend such religious exercises, then such pupil shall be dismissed before such religious exercises take place, the time appointed for such religious exercises being just before the closing hour. All public schools by the act are to be entirely non-sectarian, and no religious exercises shall be allowed therein except as above provided.

11. The act is not compulsory. No parent or guardian is compelled to send his child to a public school.

12. The only "right or privilege" with respect to denominational schools existing by practice at the date of the union was, as shown by the affidavits, a right or privilege of establishing private schools of a denominational character, supported by fees paid by parents and by voluntary contributions. This right has in no way been interfered with or "prejudicially affected" by the Public Schools Act of 1890. Members of the church of England are still entitled to establish and maintain denominational schools in the same manner as before the union.

13. The appellants petitioned your majesty in council for special leave to appeal from the judgment of the court of queen's bench for Manitoba, dated the 19th day

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of December, 1891, and by an order dated the 9th day of May, 1892, special leave to appeal was granted.

14. The appellants submit that the judgment of the court of queen's bench for Manitoba should be set aside with costs for the following amongst other

REASONS.

1. Because the judgment of the supreme court of Canada in *Barrett vs. Winnipeg*, on which the judgment of the court of queen's bench is founded, is erroneous.
2. Because the respondent has not established that he is one of a class of persons possessed of any right or privilege with respect to denominational schools in the province at the union which has been prejudicially affected by the Public Schools Act, or the by-laws complained of.
3. That the words "by law or practice" refer only to some binding rule or obligation, if there were any such, to which the inhabitants of the province were at the date of the union committed, and no such rule or obligation existed.
4. None of the rights or privileges which members of the church of England had at the union with respect to denominational schools have in any way been interfered with by the act complained of.

HORACE DAVEY,
D'ALTON McCARTHY,
ISAAC CAMPBELL.

IN THE PRIVY COUNCIL.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR MANITOBA.

BETWEEN

THE CITY OF WINNIPEG. - - - - - *Appellants,*

AND

ALEXANDER LOGAN - - - - - *Respondent.*

THE CASE OF THE RESPONDENT.

1. This is an appeal from the decision of the court of queen's bench for the province of Manitoba unanimously quashing by-law 514 of the city of Winnipeg the appellants.

2. The said by-law provided for the levying of a rate of $15\frac{3}{10}$ mills in the dollar to pay interest on the debentures of the appellants and ordinary current expenditure during the year 1891 and $4\frac{3}{10}$ mills in the dollar for school expenditure for that year, these rates being levied upon all the ratable property in the city of Winnipeg and the school-rate being levied upon persons of all religious denominations alike.

3. The respondent obtained a rule *nisi* to quash the said by-law for illegality on the following grounds:—

(a) That by the said by-law the amount to be levied for school expenditure is levied upon members of the church of England and all other religious denominations alike.

(b) That it is illegal to assess members of the church of England for the support of schools which are not under the control of the church of England and in which there are not taught religious exercises prescribed by that church, and upon grounds appearing in affidavits and papers filed.

4. The respondent established by the affidavits filed the following facts about which there is no dispute.

(a) That he is a resident ratepayer of the city of Winnipeg and a taxpayer to a large amount.

(b) That he has always been a member of the church of England; that he was born in the territory now comprised in the city of Winnipeg, and has always lived there, and that he was married and had children at the time of the union of the province of Manitoba with Canada.

(c) That at the time of the union there was a parochial denominational school of the church of England in the territory now comprised in the city of Winnipeg, which school was conducted by teachers appointed by the church of England bishop of the diocese and in which religious exercises in accordance with the tenets of the church of England were taught.

(d) That the said school was the only public school at the union in the territory now comprised in the city of Winnipeg.

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(e) That there was at the union and for some time previously thereto a complete system of schools established in the province by the church of England, all of which were under the control of the bishop and clergy of that church and were purely denominational schools in which religious exercises were conducted in accordance with the tenets of the church of England.

(f) These schools were supported partly by the funds of the church, partly by voluntary subscription and partly by fees charged to the parents of the children, but no child was excluded by reason of poverty.

(g) The respondent objected to the manner in which religious exercises are conducted in schools under the Public Schools Act and claimed the right of having his children given religious instruction in schools according to the tenets of the church of England.

5. The Public Schools Act passed by the legislature of the province of Manitoba in 1890 (53 Vict., c. 38 Man.) established one system of free public schools for the support of which all religious denominations alike should be taxed and in which no religious exercises should be taught except those prescribed by the advisory board of the department of education.

6. The respondent claimed that this act was not within the powers of the legislature of the province to enact by reason of the following provisions contained in the statute under which Manitoba was admitted into confederation, being 33 Vict., c. 3, Dominion:—

"In and for the province the said legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

"(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the union.

"(2) An appeal shall lie to the governor-general in council from any act or decision of the legislature of the province or of any provincial authority affecting any right or privilege of the protestant or Roman catholic minority of the queen's subjects in relation to education.

"(3) In case any such provincial law as from time to time seems to the governor-general in council requisite for the due execution of the provisions of this section is not made or in case any decision of the governor-general in council on any appeal under this section is not duly executed by the proper provincial authority in that behalf, then and in every such case and so far only as the circumstance of each case require, the parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the governor-general in council under this section." (33 Vict., c. 3 sec. 22.)

7. Upon hearing the argument of the rule *nisi*, which was heard before the full court of queen's bench for Manitoba, that court (consisting of Taylor, C.J., Dubuc, J., and Bain, J.,) gave judgment ordering the said by-law to be quashed upon the grounds taken, the court being unanimous. The reasons of their lordships are reported in 8 Manitoba Law Reports, page 3, and are printed in the Record.

8. The respondent submits that the judgment of the court of queen's bench for Manitoba should be affirmed and that this appeal should be dismissed with costs for the following amongst other

REASONS.

1. Because the judgments of the said judges of the court of queen's bench are right in law and fact.
2. Because the members of the church of England had at the union rights or privileges with respect to denominational schools by law or practice which are prejudicially affected by the Public Schools Act and by the by-law in question.
3. That the respondent and all other members of the church of England have the right to have religious instruction given to their children in schools in accordance with the tenets of that church.

4. Because the members of the church of England had at the union a system of schools in the province in which religious instruction was given according to the teachings of their church and the Public Schools Act in effect precludes them from now having such by compelling them to pay taxes to support non-sectarian schools from which religious instruction is practically excluded.
5. Because the provisions contained in the first sub-section of section 22 of the Manitoba Act (33 Viet., c. 3 Dominion) and above set out were specially framed to protect the rights of all classes of persons having denominational schools at the union, and the respondent belongs to one of such classes.
6. The respondent has not acquiesced in the legislation by the provincial legislature in regard to schools.
7. Acquiescence by individuals in legislation that is *ultra vires*, or tacitly submitting thereto, cannot make such legislation good.

W. E. PERDUE.

Manitoba School Acts.

IN THE PRIVY COUNCIL
ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
MANITOBA.

BETWEEN :

THE CITY OF WINNIPEG - - - - - *Appellants,*

AND

ALEXANDER LOGAN - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

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IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
MANITOBA.

BETWEEN

THE CITY OF WINNIPEG - - - - - *Appellants*

AND

ALEXANDER LOGAN - - - - - *Respondent.*

RECORD OF PROCEEDINGS.

No. 1.

Rule Nisi to show cause why an Order should not be made quashing the By-law No. 514 of the City of Winnipeg, dated 5th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash by-law 514 of the City of
Winnipeg.

Upon the application of Alexander Logan, a resident ratepayer of the city of Winnipeg, and upon hearing read a copy of said by-law certified under the hand of the clerk of the said city and under the corporate seal of the said city, and also the affidavits of the said Alexander Logan and the affidavits of the Right Reverend Robert Machray and R. H. Hayward, and the exhibits therein referred to, and upon hearing the attorney for the applicant;

I do order that the attorney or agent for the corporation of the city of Winnipeg attend before the presiding judge in chambers at the court house in the city of Winnipeg on the 17th day of December instant, at the hour of half past ten o'clock in the forenoon, or so soon thereafter as the matter can be heard, and show cause why an order should not be made quashing the said by-law for illegality because of the following among other grounds:—

1. That by the said by-law the amount estimated to be levied for school expenditure is levied upon members of the church of England and all other religious denominations alike.

2. That it is illegal to assess members of the church of England for the support of schools which are not under the control of the church of England and in which there are not taught religious exercises prescribed by said church; and upon grounds appearing in affidavits and papers filed.

Dated at chambers this 5th day of December, A. D. 1891.

T. W. TAYLOR,
Chief Justice.

Certified a true copy of the rule *nisi* on the above application.

G. H. WALKER,
Prothonotary.

"A."

This is Exhibit "A" referred to in the affidavit of Daniel Coyle, sworn before me this 5th day of December, A. D. 1891.

J. O'REILLY,
A Commissioner.

Manitoba School Acts.

No. 2.

Affidavit of service of Copy Rule, sworn 5th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash by-law 514 of the City of
Winnipeg.

I, Daniel Coyle, of Winnipeg in the county of Selkirk, clerk, make oath and say:—

That I did on the 5th day of December, 1891, serve C. J. Brown with a true copy of the rule marked exhibit "A" hereto annexed by delivering such copy to and leaving the same with the said C. J. Brown.

DAN. COYLE.

Sworn before me at Winnipeg, in the county of Selkirk, this 5th day of December, 1891.

J. O'REILLY,

A Commissioner for taking Affidavits in B.R., &c.

Certified a true copy of the affidavit of Daniel Coyle filed on the above application

G. H. WALKER,

Prothonotary.

No. 3.

Affidavit of the Most Reverend Robert Machray, Bishop of Rupert's Land, sworn 3rd December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of
Winnipeg.

I, the Most Reverend Robert Machray, doctor of divinity, of the city of Winnipeg, in the province of Manitoba, the bishop of Rupert's Land, make oath and say:—

1. In the year 1865 I was appointed by the crown, on the recommendation of the archbishop of Canterbury, under the sign manual of the queen, bishop of Rupert's Land.

2. The diocese of Rupert's Land in 1865 covered the whole of the North-west Territories of Canada, the district of Keewatin, the present province of Manitoba, and that portion of the westerly part of the province of Ontario lying westerly of the height of land and running between Rat Portage and Port Arthur.

3. Subsequently the diocese was subdivided into eight bishoprics, one of which, still known as Rupert's Land, consists of the province of Manitoba and that portion of the province of Ontario referred to above. The whole of the said original diocese of Rupert's Land is now called the ecclesiastical province of Rupert's Land, of which I am the metropolitan, and I am also bishop of the smaller diocese of Rupert's Land last above described.

4. I have continued to be bishop of the old diocese of Rupert's Land first above described and of the smaller diocese last above described ever since my appointment in 1865.

5. Upon my arrival in the diocese in 1865, I found there existed a great want of schools for the education of the youth, and I at once set about reorganizing St. John's college, and in 1866 I opened it for higher education and it has so continued ever since, and I commenced as soon as I could the reorganization of the system of primary schools of which I found most vacant.

6. I endeavoured to start at least one parochial school in each parish where there was a missionary of the church of England, and I so far succeeded in this

work that with the assistance of the church missionary society of the church of England there were under my care in 1867, 14 common parochial schools within the Red River Settlement, as well as schools at the missions in Manitoba outside the settlement and missions in the interior.

7. In the year 1869 there were 16 schools regularly organized for the teaching of boys and girls in the different parishes in the said Red River Settlement, inclusive of the Westbourne and Scantisbury.

8. I find that in my address to the synod of Rupert's Land, delivered on the 29th day of May, 1867, I used the following language with reference to the schools, viz.—“Passing now from the college to the common schools, I rejoice to say that there has been during the past half-year a full opportunity for learning the elements of education—reading, writing, and arithmetic—from the extreme end of the Indian Settlement up to Westbourne, with the single exception of the small parish of St. Margaret's at the High Bluff; and in that parish a very creditable subscription was promised towards the salary of a master, so that I trust by another year even that blank may be supplied. And I believe the distances to be travelled to these schools are not greater than are frequently performed in our home parishes in England and Scotland. Excluding the school at Westbourne, which remains on the church missionary list, being about 35 miles beyond the settlement, we must look to the maintenance of 14 schools. Of these, eight have hitherto been supported by the church missionary society at a cost of 285*l.* a year. The society said, some time ago, that this help must at once cease.”

And in my charge to the synod of Rupert's Land on the 24th day of February, 1869, I used the following language:—“Schools have been established in every parish, but the effort to maintain them has been a difficult one, from the larger amount now required to obtain the service of a schoolmaster, and from frequent resignations. The whole question must, however, soon be grappled with. There must be some distinct regulations laid down, defining the conditions under which grants from the diocesan fund are to be given, and some plan of diocesan inspection will be necessary. But before we can obtain all we could wish with our schools, I feel we must be able to provide still larger salaries and have trained teachers. How to secure such a training has been a good deal in my mind, but I do not yet see the way to the accomplishment of what I wish.” And the statements therein made by me on those two occasions are, I believe, true in substance and in fact, and are given in the reports of the synod published at the time.

9. The schools which were established as above set forth, continued until the establishment of public schools by the laws of Manitoba hereinafter referred to.

10. The teacher in each of these schools was under the control of the vestry and the clergyman of each parish, and in some cases there were two and even three parochial schools in one parish. The schools were opened and closed with forms of prayer, and the teacher of each of these schools was required to instruct the school every day in the Holy Scriptures, and he was required to teach the children the English church catechism. The missionary in each parish was expected to look after such religious training and to teach the children or see that the children were taught according to the tenets of the church of England, and the said schools were denominational schools belonging to and supported by the religious denomination of the church of England.

11. The teachers were paid a salary, part of which was paid through me to the parish clergyman, as I was treasurer of the synod, and specially looked after the funds for the support and maintenance of these various schools.

12. The money for the payment of the school teachers and for the maintenance of the schools was procured partly from the funds of the church, partly from voluntary subscriptions, and partly from fees charged the parents of the children attending the parochial schools; but, as far as my knowledge goes, no child of any English church parents was prevented from attending these schools by reason of poverty.

13. The schools above described were purely denominational schools; the teachers were members of the church of England. I do not remember in my time any instance of a teacher who was not a member of our church, with one exception.

Manitoba School Acts.

14. At the time of the union of this province with Canada there were estimated to be, and I believe there were, about 12,000 Christians residing in this province. Of these over 6,000 were Roman Catholics, and nearly 5,000 were members of the church of England, the rest were chiefly Presbyterians, with a few of other denominations.

15. The Christians residing in this province as above set forth resided in what was known as the Red River Settlement, and would practically be included in an area not exceeding 60 miles from the city of Winnipeg.

16. In the year 1871, when the first Public Schools Act of Manitoba was passed, I joined heartily with the provincial executive in endeavouring to carry into effect the school law then enacted, believing that under that act public schools could be carried on giving such religious instruction as would be satisfactory to the members of the church of England and to myself.

17. But many of the members of the Protestant section of the board of education did not hold the same views as myself as regards, for example, the necessity of not only reading but teaching the Bible, so that the religious instruction given in the schools was never satisfactory to me; but there was nothing in the act preventing a more satisfactory amount of religious teaching when the members of the section became favourable to this, so I always looked forward to securing some day more satisfactory provision. With the great majority of the bishops and clergy of the church of England, I believe that the education of the young is incomplete, and may even be hurtful if religious instruction is excluded from it.

18. The Public Schools Act passed by this province in the year 1890 has so limited religious exercises that it is doubtful if under it there can be any religious teaching given in the schools, so that the public schools to-day are not, as regards religious teaching, as I hoped and expected they would be when the first act was passed.

19. The religious and moral training given to children in the public schools of this province, under sanction of the laws of this province, is not in accordance with my views or wishes, and is not in accordance with the views of the church of England; and consequently the present law, in taxing all members of the church of England, and giving no aid from the state to denominational schools, prejudicially affects the rights and privileges of the people belonging to the church of England with respect to the denominational schools which they had by practice, and were lawfully exercising, before and at the union of this province with Canada.

20. Before the union, I, with the advice of my synod, controlled the religious training of children of persons belonging to the church of England in their education in the parochial schools.

21. When the first school act was passed above mentioned, and when the first schools under that act were established, the various parish vestries, with my sanction, permitted schools to be established and to be carried on under that act in most, if not all, the schoolhouses in which the church of England parish schools had previously been carried on, and my sanction was given in the hope and belief that at least those public schools would still give a religious and moral training such as I thought it necessary for children to receive; but if I had known then that the public schools law would permit and allow schools under that act to be carried on without, or with as little, religious training as is now given in the public schools of this province, I should have done what I could to resist it, and if unable in our peculiar circumstances to continue those parochial schools, I should have encouraged the opening of such schools and the increasing of them as soon as it was permitted; and I have no doubt that if religious training is excluded from the public schools, as is threatened, this will be the policy in future of the church of England and of myself. The re-establishment of our parish schools is merely a question of means and time.

22. If separate schools are granted to any body of Christians because of rights secured owing to practice existing prior to the union, then I claim that the church of England is peculiarly entitled to such separate schools.

23. As far as I have had any influence, I have always endeavoured to influence public opinion and the legislature as much as I could to have provision made for the

religious training of youth, and by the Public Schools Act of 1890 I was deeply disappointed; and I believe that by that act, if separate schools do not receive state aid as well as the schools under the act, the children of parents of the church of England have been prejudicially affected.

24. Before the act of 1890 was passed I expressed my views on the schools question and on the rights of the people of the church of England, under the Manitoba Act, in my charge to the synod, given on the 29th day of October, 1889, in which I used the following language:—"Though we have not now any primary schools, it is not because, in view of the church, such schools are of small importance. The day was when we had a church primary school wherever we had a clergyman. That was our position when this province was transferred to Canada, and it seems probable that the Dominion intended to recognize such efforts in the past and to protect the school interests that then existed. But our church saw such advantages in a national system of schools, and such reason to have confidence in the administration of it, that it went heartily into it, trusting that the schools would be worthy of a Christian people and give an education in which the first, namely, the religious interests of the children, would not be lost sight of. And I may say that the only reason which has led me for so many years to give up time that I could ill spare to be a member of the board of education has been the hope that, by conciliatory action, I might help in securing a measure of religious instruction reasonably satisfactory at once to ourselves and the other religious bodies."

25. One of the schools conducted by the church of England as hereinbefore mentioned was situate in the parish of St. John's, which parish now forms a part of the city of Winnipeg, and said school was situate at the time of the union of this province with Canada in a territory which now forms part of the territory of the city of Winnipeg.

26. Said schools of the church of England were supported in part by funds of the church, in part by voluntary subscriptions, and in part by fees voluntarily paid by members of the church of England and by the parents and guardians of children attending such schools, and were in no way supported or aided by funds raised by general rates or taxation.

R. MACHRAY,

Bishop of Rupert's Land.

Sworn before me at Winnipeg, in the province of Manitoba, this 3rd day of December, A.D. 1891.

J. R. FULLERTON,

A Commissioner in B. R., &c.

Certified a true copy of the affidavit of Robert Machray, Bishop of Rupert's Land, filed on the above application.

G. H. WALKER,

Prothonotary.

No. 4.

Affidavit of Alexander Logan (the Respondent), sworn 3rd December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash by-law 514 of the City of Winnipeg.

I, Alexander Logan, of the city of Winnipeg, in the province of Manitoba, esquire, make oath and say:—

1. I was born in the year eighteen hundred and forty-one, at Point Douglass, in the Red River Settlement in Rupert's Land, and I have always resided at the said Point Douglass, and still reside there.

2. The said Point Douglass is in the parish of St. John's, in the province of Manitoba, and is within the territorial limits of the city of Winnipeg, and I am a resident of the said city of Winnipeg and a ratepayer thereof to a large amount.

3. I am and always have been a member of the church of England.

4. At the time of the union of the province of Manitoba with Canada I was married and had two children.

Manitoba School Acts.

5. At, and for many years prior to the said union, there was a parochial denominational school of the church of England within the said parish of St. John's, and within the territory now comprised in the city of Winnipeg, and the said school was a day school conducted by teachers appointed by the church of England bishop of Rupert's Land, in which, and in addition to the ordinary subjects taught in schools, the catechism of the church of England was taught, and the pupils in said school were instructed in religious subjects according to the tenets of the church of England.

6. The said school was continued up to and for some time after the union of the said province with Canada, and the same school still exists in a modified form, and I attended said school as a pupil before said union and received my primary education therein.

7. I was well acquainted with the said Red River Settlement before and after said union, and I say that at the time of said union there was established in each parish of the church of England throughout said settlement a parochial denominational school, and in some parishes more than one of such schools, and in all such schools teachings in religious subjects according to the church of England faith were conducted in a manner similar to the said school in the parish of St. John's, and the children of English church parents attend said schools and no other schools.

8. Save and except the said English church parochial school of the parish of St. John's and St. John's college, which also belonged to the church of England, and except a private school kept by the nuns on the property of the late William Drever, there was not at the time of said union any school or educational institution in existence within said territory now included in the city of Winnipeg.

9. The territory comprised in the city of Winnipeg covers an area of about 20 square miles.

10. The paper writing hereunto annexed and marked with the letter "A" is a certified copy of the above-mentioned by-law of the city of Winnipeg, no. 514, and said copy was received from the city clerk of the city of Winnipeg.

11. In and by said by-law a rate is levied for school purposes of four and two-tenths mills in the dollar upon all ratepayers alike, and upon persons of all religious denominations alike, and the moneys so raised are intended to be used in the support of public non-sectarian schools pursuant to the provisions of the Public Schools Act.

12. I have not yet paid my taxes for the year one thousand eight hundred and ninety-one, imposed under said by-law.

13. I have at the present time three children of school age, namely, one of the age of fourteen years, one of the age of eleven years, and one of the age of five years, and I claim the right to have my children taught religious exercises in school according to the tenets of the church of England, and I claim that such right was secured to me and other members of the church of England at the time of said union by the provisions of the Manitoba Act.

14. I do not approve of the manner in which religious exercises are taught in schools where they are so taught under the provisions of the Public Schools Act, and I claim that the tax for the support of schools imposed upon me, by said by-law, and pursuant to said Public Schools Act, or by any other act of the legislature by which I am compelled to contribute for the support of schools not under the control of the church of England, prejudicially affects my rights as a member of the church of England, and if compelled to pay such tax I and other members of the church of England are less able to support schools in which religious exercises and teachings in accordance with our form of worship could be conducted.

ALEXANDER LOGAN.

Sworn before me, at the city of Winnipeg, in the province of Manitoba, this 3rd day of December, A.D. 1891.

R. H. HAYWARD,

A Commissioner in B. R., &c.

Certified a true copy of the affidavit of Alexander Logan, filed on the above application.

G. H. WALKER,
Prothonotary.

No. 5.

By-law No. 514 of City of Winnipeg, dated 13th July, 1891.

"A."

By-law No. 514.

A By-law to Authorize an Assessment for City and School Purposes in the City of Winnipeg for the current Municipal Year, A.D. 1891.

Whereas, it is expedient and necessary for city purposes to raise the sum of 389,327 dollars 19 cents, for interest on debentures and ordinary current municipal and district and school expenditure for the current year by a tax on all real and personal property appearing on the assessment rolls of the city of Winnipeg for the year 1891, except properties wholly or partially exempt;

And whereas, the amount of the whole ratable property of the city of Winnipeg as shown by the last revised assessment rolls of the said city of Winnipeg is 19,944,270 dollars;

And whereas, certain properties are exempt from all rates save for schools and school expenditure, and it will require a rate of $19\frac{1}{2}$ mills on the dollar on the amount of the said ratable property to raise the sum so required as aforesaid for interest on debentures now accruing due and for the ordinary current municipal and school expenditure for the year A.D. 1891, whereof the rate of $15\frac{3}{10}$ ths mills on the dollar shall be for interest on debentures now accruing due, and for the ordinary current municipal expenditure, and the rate of $4\frac{2}{10}$ ths mills on the dollar shall be for school expenditure for the year 1891;

Therefore the council of the city of Winnipeg in council assembled enacts as follows:—

1. There shall be raised, levied, and collected a tax of $19\frac{1}{2}$ mills on the dollar upon the whole assessed value of the real and personal property in the city of Winnipeg, according to the last revised assessment rolls for the year 1891, of which the amount of $15\frac{3}{10}$ ths mills on the dollar shall be to provide for the payment of interest on debentures now accruing due, and for the ordinary current municipal expenditure, and $4\frac{2}{10}$ ths mills on the dollar shall be for the schools of the city for the year A.D. 1891.

2. Upon properties ratable for school expenditure only, there shall be levied and collected a rate of $4\frac{1}{2}$ th mills on the dollar of assessment.

3. The sum of two dollars poll tax shall be levied and collected from every person residing within the city of Winnipeg, and being of the age of 21 years and upwards who has not been assessed upon the assessment roll of the city of Winnipeg, or whose taxes do not amount to two dollars, in which latter case a total tax of two dollars only shall be levied, which taxes shall be collected in the same manner as other taxes.

The taxes and rates hereby imposed shall be considered to have been imposed and to be due on and from the 14th day of July, A.D. 1891.

Done and passed in council assembled at the city of Winnipeg this 13th day of July, A.D. 1891.

A. McMICHEN,
Chairman.

C. J. BROWN,
City Clerk.

Certified true copy of by-law no. 514 of the City of Winnipeg, passed in council on the 13th day of July, A.D. 1891.

C. J. BROWN,
City Clerk.

Certified a true copy of the copy of by-law filed on the application to quash by-law 514.

G. H. WALKER,
Prothonotary.

Manitoba School Acts.

No. 6.

Affidavit of Robert Henry Hayward, sworn 4th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of Winnipeg.

I, Robert Henry Hayward, of the city of Winnipeg, in the province of Manitoba, accountant, make oath and say :—

1. I am now and have been for the past 10 years a resident of the city of Winnipeg.

2. I am and have been for a number of years past a ratepayer of said city.

3. I am a member of the church of England.

4. The religious exercises conducted in the public schools of the city of Winnipeg at the present time are those prescribed by the advisory board of the department of education, pursuant to the provisions of the Public Schools Act, and such exercises consist of the reading, without note or comment, of certain selections from the authorized English version of the Bible, or the Douay version of the Bible, and the use of a form of prayer.

5. The said selections from the Scriptures are not taught, but are simply read without comment, and neither the catechism of the church of England nor any other catechism is taught in said schools, nor is any religious instruction given in said schools beyond the reading of said selections from the Bible, and the reading of said prayer.

6. The printed pamphlet now produced and shown to me and marked as exhibit "B" to this my affidavit, is a printed copy of the regulations of the said advisory board regarding religious exercises in public schools, and the said pamphlet was received from the department of education for the province of Manitoba.

7. I have read over the certified copy of the above-mentioned by-law, which is annexed to the affidavit of Alexandor Logan, sworn to herein on the 3rd day of this present month of December, and which certified copy is now produced and shown to me at the time of making this affidavit, and is marked as exhibit "A" to this affidavit.

8. In and by the said by-law a rate is levied for school purposes of $4\frac{1}{2}$ ths mills in the dollar upon all ratepayers of the city of Winnipeg alike, and upon members of the church of England as well as upon members of all other religious denominations, no distinction being made in respect of religious denominations, and the moneys so raised are intended to be used in the support of public non-sectarian schools established pursuant to the provisions of the Public Schools Act.

9. The effect of said by-law is that members of the church of England are compelled to pay a tax for the support of public non-sectarian schools, in which there is not religious teaching according to the tenets of the church of England.

10. I have one boy of school age, namely, the age of 13 years, and although I am compelled by the said by-law and by the Public Schools Act to contribute to the support of said public schools established under said Public Schools Act, I send him to a school established by the rector of the English church parish of All Saints, in the said city of Winnipeg, and under the control and management of the said rector, where he receives religious instruction according to the tenets of the said church of England in addition to ordinary school instruction, and I voluntarily pay fees for his tuition at said school, and I do not send him to any of the said public schools.

11. There are many other boys in the said city of Winnipeg sent by their parents who are resident ratepayers of the city of Winnipeg and members of the church of England to the said All Saints school, for reasons which I verily believe are similar to my own.

R. H. HAYWARD.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 4th day of December, A.D. 1891.

GHEENT DAVIS,
A Commissioner in B. R., &c.

Certified a true copy of the affidavit of Robert Henry Maynard, filed on the above application.

G. H. WALKER.

Prothonotary.

No. 7.

Regulations of the Advisory Board regarding Religious Exercises in Public Schools, adopted 21st May, 1890.

Until further notice the religious exercises in the public schools shall be:—

(a) The reading, without note or comment, of the following selections from the authorized English version of the Bible or the Douay version of the Bible.

(b) The use of the following forms of prayer.

SCRIPTURE READINGS.

Part I.—*Historical.*

1 The Creation.....	Gen. i., 1-19.
2 The Creation—cont.....	Gen. i., 20-31.
3 The Fall of Man.....	Gen. iii.
4 The Deluge.....	Gen. viii., 1-22.
5 The Covenant with Noah.....	Gen. ix., 1-17.
6 The Trial of Abraham.....	Gen. xxii., 1-18.
7 Isaac Blesses Jacob.....	Gen. xxvii., 1-29.
8 Esau's Blessing.....	Gen. xxvii., 30-45.
9 Jacob's Vision.....	Gen. xxviii., 10-22.
10 Jacob's Return to Bethel.....	Gen. xxxv., 1-15.
11 Joseph and his Brethren.....	Gen. xxxvii., 1-22.
12 Joseph Sold into Egypt.....	Gen. xxxvii., 23-36.
13 Pharaoh's Dream.....	Gen. xli., 1-24.
14 Joseph's Interpretations.....	Gen. xli., 25-43.
15 Jacob's Sons' Visit.....	Gen. xlii., 1-20.
16 Jacob's Sons' Return from Egypt.....	Gen. xliii., 21-38.
17 The Second Visit to Egypt.....	Gen. xliii., 1-14.
18 Joseph and his Brethren.....	Gen. xliii., 15-34.
19 Joseph and his Brethren—cont.....	Gen. xliv., 1-13.
20 Joseph and his Brethren—cont.....	Gen. xliv., 14-34.
21 Joseph Discovers Himself to his Brethren.....	Gen. xlv.
22 Jacob and his Household go into Egypt.....	Gen. xlv., 1-6, 28-34.
23 Jacob's Interview with Pharaoh.....	Gen. xlvii., 1-12.
24 Death of Jacob.....	Gen. xlviii., 1-21.
25 Burial of Jacob.....	Gen. l., 1-26.
26 Moses at the Burning Bush.....	Exod. iii., 1-20.
27 Grievous Oppression of the Hebrews.....	Exod. v.
28 The Passover.....	Exod. xii., 1-20.
29 The Israelites Escape through the Red Sea.....	Exod. xiv., 10-31.
30 The Song of Deliverance.....	Exod. xv., 1-22.
31 Giving of Manna.....	Exod. xvi., 2-35.
32 The Water from the Rock.....	Exod. xvii.
33 The Ten Commandments.....	Exod. xx., 1-17.
34 The Covenant with Israel.....	Exod. xxiv.
35 The Tabernacle.....	Exod. xl., 17-36.
36 Spies sent into Canaan.....	Num. xiii., 17-33.
37 The People Rebel at the Report of the Spies.....	Num. xiv., 1-30.
38 The Song of Moses.....	Deut. xxxii., 1-14.
39 The Death of Moses.....	Deut. xxxiv.
40 Joshua Succeeds Moses.....	Josh. i., 1-17.

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41 The Covenant with Joshua.....	Josh. xxiv., 1-28.
42 The Call of Samuel.....	1 Saml. iii.
43 The Israelites Desire a King.....	1 Saml. viii., 1-20.
44 Samuel Anoints Saul.....	1 Saml. ix., 21-27, xi., 1-11.
45 Samuel Anoints David.....	1 Saml. xvi.
46 David and Goliath.....	1 Saml. xvii., 1-27.
47 David Overcomes Goliath.....	1 Saml. xvii., 28-54.
48 David and Jonathan.....	1 Saml. xviii., 1-16.
49 David instructed as to the Building of the Temple.....	1 Chron. xvii., 1-17.
50 David's Advice to Solomon.....	1 Chron. xxviii., 1-20.
51 David's Preparation for Building the Temple.....	1 Chron. xxix., 1-19.
52 Solomon's Wise Choice.....	1 Kings iii., 1-15.
53 Preparations for Building the Temple.....	1 Kings v.
54 Solomon's Prayer at the Dedication of the Temple.....	2 Chron. vi., 1-21.
55 Solomon's Prayer—cont.....	2 Chron. vi., 22-42.
56 Elijah.....	1 Kings xvii.
57 Elijah and the Prophets of Baal.....	1 Kings xviii., 1-21.
58 Discomfiture of the Prophets of Baal.....	1 Kings xviii., 22-46.
59 Elijah in the Wilderness.....	1 Kings xix., 1-13.
60 Elijah and Elisha.....	2 Kings ii., 1-15.
61 Naaman the Leper.....	2 Kings v., 1-19.
62 The Fall of Israel.....	2 Kings xvii., 6-24.
63 Public Worship of God Restored.....	2 Chron. xxix., 20-36.
64 Deliverance under Hezekiah.....	2 Kings xix., 1-19.
65 Deliverance under Hezekiah—cont.....	2 Kings xix., 20-39.
66 Rejoicing of the Israelites at the Restoration of Divine Worship.....	2 Chron. xxx.
67 Jerusalem taken by Nebuchadnezzar.....	2 Chron. xxxvi., 5-21.
68 The Golden Image.....	Dan. iii., 1-18.
69 The Fiery Furnace.....	Dan. iii., 19-30.
70 Daniel in the Lions' Den.....	Dan. vi.
71 The Temple Rebuilt.....	Ezra i., 1-6, and iii.

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1 Christ the Word.....	John i., 1-18.
2 The Birth of Christ announced.....	Luke ii., 8-20.
3 The Visit of the Magi.....	Matt. ii., 1-12.
4 The Song of Simeon.....	Luke ii., 25-40.
5 Jesus in the Temple.....	Luke ii., 41-52.
6 The Baptism of Jesus Christ.....	Matt. iii., 1-17.
7 The Temptation of Our Lord.....	Luke iv., 1-15.
8 Testimony of John the Baptist.....	John i., 19-34.
9 The First Disciples.....	John i., 35-51.
10 Jesus at Nazareth.....	Luke iv., 16-32.
11 At Capernaum.....	Matt. iv., 13-25.
12 Sermon on the Mount.....	Matt. v., 1-12.
13 Sermon on the Mount—cont.....	Matt. v., 13-20, 33-37.
14 Sermon on the Mount—cont.....	Matt. v., 38-48.
15 Sermon on the Mount—cont.....	Matt. vi., 1-18.
16 Sermon on the Mount—cont.....	Matt. vi., 19-34.
17 Sermon on the Mount—cont.....	Matt. vii., 1-14.
18 Sermon on the Mount—cont.....	Matt. vii., 15-29.
19 The Miraculous Draught of Fishes.....	Luke v., 1-15.
20 The Healing of the Paralytic.....	Luke v., 16-26.
21 The Twelve Apostles sent forth.....	Matt. ix., 36-38, x., 1-11.
22 The Centurion's Servant. The Widow's Son.....	Luke vii., 1-17.
23 The Declaration concerning John.....	Matt. xi., 2-19.
24 The Feast in Simeon's House.....	Luke vii., 36-50.

25 Privileges and Responsibility.....	Matt. xi., 20-31.
26 The Sabbath.....	Luke vi., 1-11.
27 Parable of the Sower.....	Mark iv., 1-20.
28 Parable of the Tares, &c.....	Matt. xiii., 24-35.
29 Parable of the Tares explained, with other Parables....	Matt. xiii., 36-52.
30 Children brought to Jesus. Condition of Discipleship..	Mark x., 13-30.
31 Tribute to Cæsar. The Widow's Offering.....	Matt. xxii., 15-22; Mark xii., 41-44.
32 Christ Confessed.....	Matt. xvi., 13-28.
33 Christ feeding Five thousand.....	Mark vi., 30-41.
34 Christ Walking on the Sea.....	Matt. xiv., 22-23.
35 The Transfiguration.....	Matt. xvii., 1-13.
36 The Great Supper.....	Luke xiv., 7-24.
37 The Lost Sheep and Lost Piece of Silver.	Luke xv., 1-10.
38 The Two Sons.....	Luke xv., 11-32.
39 The Pharisee and the Publican.....	Luke xvi., 9-17.
40 Blind Bartimeus. Zaccheus the Publican.....	Luke xviii., 35-43; xix., 1-10.
41 The Good Samaritan.....	Luke x., 25-37.
42 The Good Shepherd.....	John x., 1-18.
43 Christ One with the Father.....	John x., 22-42.
44 Humility.....	John xiii., 1-17.
45 The Death of Lazarus.....	John xi., 30-48.
46 The Triumphal Entry into Jerusalem.....	Mark xi., 1-11; Matt. xxi., 9-16.
47 Parable of the Ten Virgins.....	Matt. xxv., 1-13.
48 Parable of the Talents.....	Matt. xxv., 14-30.
49 The Judgment.....	Matt. xxv., 31-46.
50 Christ Comforts the Disciples.....	John xiv., 1-14.
51 The Holy Spirit Promised.....	John xiv., 15-31.
52 Christ the True Vine.....	John xv., 1-17.
53 Last Sayings of Jesus.....	John xvi., 1-15, 26-33.
54 The Prayer of Christ.....	John xvii., 1-26.
55 The Box of Precious Ointment.....	Matt. xxvi., 1-13.
56 The Last Supper.....	Matt. xxvi., 17-29.
57 The Agony in the Garden. Betrayal of Jesus.....	Matt. xxvi., 30-56.
58 Christ before Caiaphas and Peter's Denial.....	Matt. xxvi., 57-75.
59 Christ before Pilate.....	Matt. xxvii., 1-25.
60 The Crucifixion.....	Matt. xxvii., 26-43.
61 The Crucifixion—cont.....	Luke xxiii., 39-56.
62 The Resurrection.....	Mark xvi., 1-7; John xx., 3-18.
63 The Journey to Emmaus.....	Luke xxiv., 13-35.
64 Jesus Appears to His Disciples. The Doubts of Thomas.....	John xx., 19-29.
65 Jesus Appears again to His Disciples.....	John xxi., 1-23.
66 The Ascension.....	Matt. xxviii.

FORM OF PRAYER.

Most merciful God, we yield thee our humble and hearty thanks for thy fatherly care and preservation of us this day, and for the progress which thou hast enabled us to make in useful learning; we pray thee to imprint upon our minds whatever good instructions we have received, and to bless them to the advancement of our temporal and eternal welfare; and pardon, we implore thee, all that thou hast seen amiss in our thoughts, words and actions. May thy good providence still guide and keep us during the approaching interval of rest and relaxation, so that we may be prepared to enter on the duties of the morrow with renewed vigour both of body and mind; and

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preserve us, we beseech thee, now and for ever, both outwardly in our bodies and inwardly in our souls, for the sake of Jesus Christ, thy Son, our Lord. Amen.

Our Father who art in heaven, hallowed be thy name. Thy kingdom come. Thy will be done on earth as it is in heaven. Give us this day our daily bread; and forgive us our trespasses, as we forgive them that trespass against us; and lead us not into temptation, but deliver us from evil.—Amen.

The grace of our Lord Jesus Christ, and the love of God, and the fellowship of the Holy Ghost, be with us all evermore.—Amen.

Certified a true copy of exhibit "B" to affidavit of Robert Henry Hayward filed herein.

G. H. WALKER,
Prothonotary.

No. 8.

Affidavit of Alexander Polson, sworn 12th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of Winnipeg.

I, Alexander Polson, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, license inspector, make oath and say:—

1. That for a period of fifty years I have been a resident in the province of Manitoba.

2. That schools which existed prior to the province of Manitoba entering confederation, were, so far as the people were concerned, purely private schools, and were not in any way subject to public control, nor did they in any way receive public support. Attendance at such schools was voluntary, and only the parents or guardians who had children attending school paid any fees. There was no law or statute as to schools. The schools were under the direction of the clergy or the governing bodies of one of the three churches, the Roman catholic, the church of England, and the presbyterian.

3. No school taxes or rates were collected by any authority prior to the province of Manitoba entering confederation, and there were no means by which any person could be forced by law to support any of said private schools.

I think the only public revenue of any kind then collected was the customs duty of 4 per cent, but none of this was for schools. There were no municipal or school rates, and no direct taxes of any kind levied, whether by assessment on property, income tax, or otherwise.

ALEX. POLSON.

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 12th day of December, A.D., 1891.

CHAS. N. BELL,

A Commissioner in B. R., &c.

Certified a true copy of affidavit of Alexander Polson, filed on the above application.

G. H. WALKER,
Prothonotary.

No. 9.

Affidavit of George Bryce, sworn 11th December, 1891.

In the Queen's Bench.

In the Matter of an Application to quash By-law 514 of the City of Winnipeg.

I, George Bryce, of the city of Winnipeg, in the county of Selkirk, in the province of Manitoba, professor in Manitoba college, make oath and say:—

1. That I have been a resident of the province of Manitoba since the year 1871. That I am the minister of the presbyterian church, longest resident in the province; that I have been in constant communication with the officers and councils of the church, having been the first moderator of the synod of Manitoba and the North-West Territories of the presbyterian church in Canada, and I am personally aware of the truth of the matters herein alleged.

2. That I am familiar with the opinions of the presbyterians of the province in the years immediately succeeding the entrance of Manitoba into confederation in 1870, and am aware that the presbyterians of this province did not claim to have the church schools, which had been previously voluntarily maintained by them or by the church for them, continued to them at cost to the general public, but were willing to support a public school system.

3. That in founding Manitoba college, in November, 1871, I took over the highest class of Kildonan school as the beginning of the college, which had thus far continued a purely church institution, and for which I never heard the claim advanced that we were entitled to any consideration under the Manitoba Act; indeed, I always considered the government schools as entirely different, and, up to 1871, unknown in the country, and for several years we did take younger students into our church college, who might have been educated in the government schools alongside.

4. That about the year 1876 a strong agitation took place in the province to have one public school system established, but this agitation failed to obtain effect in legislation.

5. The presbyterian synod of Manitoba and the North-west Territories, which represents the largest religious body in Manitoba, passed in May, 1890, a resolution heartily approving of the Public School Act of this year, and I believe it is approved of by the great majority of the presbyterians of Manitoba.

6. That the presbyterian church is most solicitous for the religious education of all its children. It takes great care in the vows required of parents at the baptism of their children, and in urging its ministers to teach from the pulpit the duty of giving moral and religious training in the family. It is most energetic in maintaining efficient Sunday schools, which have been called the "children's church," and in requiring the attendance of the children at the church services, which are made a great means of instruction. I think it is our firm belief that this system, joined with the public school system, has produced and will produce a moral, religious, and intelligent people.

7. I believe that the views of a large number of the presbyterians in this province are represented by the following extracts from a public address delivered by the Rev. J. M. King, D.D., principal of Manitoba college, on the 31st day of October 1889. After giving reasons in opposition to purely secular schools, Dr. King proceeds:—"At the opposite extreme there is a system of separate or denominational schools, such as to some extent now obtains in this province, a system under which not only is religious instruction given, but the distinctive doctrines and practices of individual churches are taught. Does the continuance and extension of this system promise a solution of the educational difficulty? By no means. Less injurious probably in its operation, it is even more indefensible in principle than the one which has been so freely criticised. First, it is in direct violation of the principle of the separation of church and state. It is unnecessary, indeed it would be quite irrelevant, to argue this principle here. It is that on which, rightly or wrongly, the state with us is constituted. I do not understand it to mean that the state may not have regard to religious considerations, such as it shows when it enforces the

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observance of the Sabbath rest, or that it may not employ religious sanctions, as it does when in its courts of law it administers an oath in the name of God; but I do understand it to mean that the state is neither to give material aid to the operations of the church in any of its branches, nor to interfere with its liberties. Each, while necessarily influencing the other, has its own distinctive sphere, and must bear all the responsibilities of action within that sphere.

Second, the system of separate or sectarian schools operates injuriously on the well-being of the state. However useful it may be to the church or churches adopting it, enabling them to keep their youth well in hand and to preserve them from any danger to faith and morals which might result from daily contact with those of a different creed, it is in that measure hurtful to the unity and therefore to the strength of the state. It occasions a line of cleavage in society, the highest interests of which demand that it should as far as possible be one. It perpetuates distinctions, and almost necessarily gives rise to distinctions which are at once a reproach and a peril.

Surely the state should not, unless compelled to do so, lend the authority of law and the support of public moneys to a system of education which so injuriously affects its unity and therefore its stability and well-being.

But if a purely secular system of education is deemed in the highest degree objectionable, and a denominational or sectarian system only less objectionable, what is it proposed to establish in their place? I answer, a system of public, unsectarian, but not non-religious schools. It is admitted on all hands that the main work of the school ought to be instruction in the various secular branches. Its primary aim is to fit those in attendance for the active duties of life. But as not inconsistent with this aim, rather as in a higher degree subservient to its attainment, it is desired that the religious element should have a definite place assigned to it in the life of the school; that it should be recognized to this extent at least, that the school should be opened and closed with prayer; that the Bible, or selections from it, should be read daily, either in the common, or in the Douay version as the trustees may direct; that the morality inculcated should be Christian morality, and that the teacher should be at liberty to enforce it, and should be encouraged to enforce it, and should be encouraged to enforce it by those considerations, at once solemn and tender, which are embraced in the common belief of Christendom. A system of public education of this kind, in which religion has a definite but at the same time strictly guarded place assigned to it, ought to be acceptable to the great majority of the people of this province. It has certainly much to recommend it. It has no sectarian features, and yet it is not godless. Religion is recognized in it in such form and degree as to make it possible to give a high tone to the life of the school, as to secure more or less familiarity with the contents of Scripture on the part of every child, and as to make available for the teacher those lofty and sacred sanctions which have in all ages been found the most effective instruments in the enforcement of morality."

GEORGE BRYCE,

Sworn before me, at the city of Winnipeg, in the county of Selkirk, this 11th day of December, A.D. 1891.

ALEX. HAGGART,

A Commissioner, &c.

Certified a true copy of affidavit of George Bryce, filed in above application.

G. H. WALKER,

Prothonotary.

No. 10.

Affidavit of Edmund M. Wood, sworn 10th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of Winnipeg.

I, Edmund M. Wood, of the city of Winnipeg, in the province of Manitoba, esquire, make oath and say:—

1. I am an officer employed by the government of Manitoba, and occupy the position of chief clerk in the department of municipal commissioner, and am also employed in the public works department, and know the facts herein deposed to be true.

2. Pursuant to chapter 25 of the statutes passed in this province in the fifty-second year of her majesty's reign, the government of the province of Manitoba erected a building to be used as the Manitoba deaf and dumb institution, the erection and completion of which building with its furniture cost over 18,000 dollars.

3. The government of the province of Manitoba have for several years past carried on at public expense a school for the teaching of the deaf and dumb, and that school is now being carried on at an annual cost of about 7,500 dollars.

4. This money is paid out of the general funds of the province, and the school is open to all classes of people of every creed and belief.

5. The school is purely non-sectarian, and is for the education in a purely secular way of all classes of children.

E. M. WOOD.

Sworn before me, at Winnipeg, in the province of Manitoba, this 10th day of December, A.D. 1891:

JOHN O. SMITH,
A Commissioner, &c.

Certified a true copy of affidavit of Edmund M. Wood, filed on the above application.

G. H. WALKER,
Prothonotary.

No. 11.

Affidavit of Thomas Dickey Cumberland, sworn 10th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of Winnipeg.

I, Thomas Dickey Cumberland, of the city of Winnipeg, in the province of Manitoba, barrister, make oath and say:—

1. I have examined the Dominion government census returns of the census of the province of Manitoba taken during the year 1886, and I find that the population of the said province shown by said census was 108,640.

2. From the said returns I find that the five leading religious denominations in the said province were, according to the said census, in number as follows, namely:—Roman catholic, 14,651; church of England, 23,206; presbyterians, 28,406; methodist, 18,648; and baptist, 3,296.

3. I have been a resident of the province of Manitoba since the year 1881.

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4. I believe no material change has taken place in the relative numbers of the different denominations aforesaid since the year 1886 in Manitoba.

T. D. CUMBERLAND.

Sworn before me, at Winnipeg, in the province of Manitoba, this 10th day of December, A.D. 1891.

J. B. MORRICE,
A Commissioner, &c., in B. R.

Certified a true copy of affidavit of Thomas Dickey Cumberland, filed on the above application.

G. H. WALKER,
Prothonotary.

No. 12.

Affidavit of Hector Mansfield Howell, sworn 12th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of Winnipeg.

I, Hector Mansfield Howell, of the city of Winnipeg, in the province of Manitoba, esquire, make oath and say:—

1. I have resided in this province continuously for the last twelve years. I have travelled over large portions of this province, and am familiar with the general state of its settlement and the distribution of its population.

2. The chief city of the province is the city of Winnipeg, with a present population of about 25,000 people. There are two other towns with populations of about 4,000 each, and there is a large number of villages with populations ranging from 200 or 300 to 1,000 people.

3. According to the last census taken in this year, there is reported to be about 155,000 residents in the whole province, and in my opinion at least 50,000 of these reside in villages and in the towns and in the city of Winnipeg. The remainder of the population reside upon farms pretty evenly distributed over an area of country exceeding 23,000 square miles.

4. From my knowledge of the sparse settlement of this country, I verily believe that if separate schools are granted to the English church people and to the Roman catholics it will be very difficult to support any system of public schools except in the centres of population like towns and cities, and I verily believe that if three systems of schools were established, each system would be very defective and would be of little use towards general education.

H. M. HOWELL.

Sworn before me, at Winnipeg, in the province of Manitoba, this 12th day of December, A. D. 1891.

HEBER ARCHIBALD,
A Commissioner in B.R., &c.

Certified a true copy of the affidavit of Hector Mansfield Howell, filed in the above application.

G. H. WALKER,
Prothonotary.

No. 13.

Judges' reasons.—Judgment.

THE CHIEF JUSTICE.

This is an application made by a ratepayer, a member of the church of England, to quash the by-law no. 514 of the city of Winnipeg, for levying and raising the assessments for the year 1891, on the grounds:—

(1) That by the said by-law the amount estimated to be levied for school expenditure is levied upon members of the church of England and all other religious denominations alike.

(2) That it is illegal to assess members of the church of England for the support of schools which are not under the control of the church of England, and in which there are not taught religious exercises prescribed by that church. The affidavits filed in support of the application allege that at the time of the union with Canada of what is now the province of Manitoba, there were in operation a number of parochial schools, in which the distinctive principles and doctrines of the church of England were taught, and which were supported by members of that church, and out of the funds of the church. In the case of "*Barrett vs Winnipeg*," a Roman catholic ratepayer sought to quash two by-laws of the city, levying by assessment the amount required for the municipal and school purposes of the city for the year 1890. The ground upon which it was sought to quash these by-laws was that, by them the amounts levied for school purposes for the protestant and catholic schools were united, and one rate levied upon protestants and Roman catholics alike for the whole sum. The question involved in that case was whether "The Public Schools Act" of 1890, under the authority of which the city had acted, was one within the power of the local legislature to pass. The argument against its validity was that the Roman catholics had at the time of the union, denominational schools in this province, and therefore the act prejudicially affected a right or privilege which they, as a class of persons, then had by law or practice. The supreme court has decided this contention to be well founded, that the Public Schools Act is one which the legislature of this province had no power to pass, and has ordered the by-laws in question in that case to be quashed. If the facts alleged in the affidavits supporting the present application are correct, and no attempt has been made to contradict them, I do not see how it can be distinguished from "*Barrett vs Winnipeg*." The supreme court there decided a case in which the question was raised as here, by an individual member of the church. There can be no doubt that under the decision in that case the members of the church of England are also a class of persons who had, in the matter of education, a right or privilege by law or practice at the time of the union. In the New Brunswick case of *re Renaud*, the court in New Brunswick dealt with section 93 of the British North America Act. In that case the learned chief justice, now chief justice of the supreme court, held that the words of sub-section 1 were not intended to distinguish between Roman catholics on one hand and protestants on the other. The sub-section means, he said, just what it expresses, that "any," that is every "class of persons," having any right or privilege in respect of denominational schools, whether such class should be one of the numerous denominations of protestants or Roman catholics, should be protected. If that is the true reading of sub-section 1 of section 93 of the British North America Act, and I do not see how any other reading can be given to it, the same construction must be put upon the corresponding sub-section of the Manitoba Act. The words protestant and catholic are used in the British North America Act as in the Manitoba Act. That being so, there can, I think, be no doubt that under the decision of the supreme court in "*Barrett vs Winnipeg*," the members of the church of England are a class of persons who had, at the time of the union, a right or privilege by law or practice, which is prejudicially affected. I cannot see that the argument can be urged of acquiescence on the part of the applicant. He may not, indeed he did not, move while the previous school acts were in force, but it is a public right he is now contending for, and I do not see that such a constitutional right can be waived. It may slumber, or not be

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enforced, but it is there at the same time. If the members of the church of England have the right or privilege under the act, it is illegal to assess members of that church for the support of schools which are not under the control of that church, and as the by-law no. 514, now in question, levies one rate upon ratepayers of all denominations it is illegal and must be quashed. Mr. Justice Dubuc and Mr. Justice Bain both concurred.

Certified a true copy of the judgment of the chief justice of the court of queen's bench delivered on above application.

G. H. WALKER,
Prothonotary.

BAIN, JUDGE.

I agree with the chief justice that the application should be allowed. In view of the decision of the supreme court reversing the judgment of this court in "*Barrett vs. Winnipeg*," 7 M. R., 273, it seems to me that the only question that is open to us to consider is whether the applicant has shown that he is one of a class of persons who at the time of the union were maintaining denominational schools; the affidavits filed show that Mr. Logan was at the time of the union, and still is, a member of the church of England, and at the time of the union the church of England was maintaining a number of schools, and that these schools beyond question were strictly denominational schools. Now, unless it can be held that sub-section 1 of section 22 of the Manitoba Act applies only to Roman catholics and protestants, and not to Roman catholics and the several protestant denominations or classes of persons who were maintaining denominational schools, the applicant here is in precisely the same position that Mr. Barrett was in in "*Barrett vs. Winnipeg*," and he has made out a much stronger case as regards the episcopalians than Mr. Barrett did as regards Roman catholics. What was shown in the Barrett case was, that the applicant was a ratepayer and a member of the Roman catholic church, and that the church prior to and at the time of the union had been maintaining denominational schools, and the supreme court holding that the Public Schools Act, 1890, prejudicially affected the rights of Roman catholics with respect to denominational schools, declared the act to be invalid, and quashed the by-law that the city of Winnipeg had enacted under its authority. As regards the application of sub-section 1, I agree with the chief justice that it applies not merely to protestants and Roman catholics, but to every class of persons who were maintaining denominational schools at the time of the union, and indeed, the decision in *ex parte Renaud* probably precludes any other view of its application.

I cannot distinguish the present case from "*Barrett vs. Winnipeg*," and I think the by-law must, therefore, be quashed.

Certified a true copy of the judgment of Mr. Justice Bain, delivered on the above application.

G. H. WALKER,
Prothonotary.

No. 14.

Rule absolute quashing By-law No. 514, date 19th December, 1891.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of Winnipeg.

Upon reading the rule granted herein on the 5th day of December, A.D. 1891, upon the application of the applicant, Alexander Logan, to quash the said by-law and the affidavit of service thereof, and upon reading the certified copy of the said by-law and the affidavits and papers filed in support of said rule, and the affidavits of the Reverend George Bryce, Alexander Polson, H. M. Howell, T. D. Cumberland, and

E. M. Wood, filed on behalf of the city of Winnipeg, and upon reading the order by the Honourable Thomas Wardlaw Taylor, chief justice of this court, referring the said rule to the full court, and upon hearing what was alleged by counsel for the said applicant, Alexander Logan, and for the city of Winnipeg and for the attorney-general of the province of Manitoba;

It is ordered that the said by-law 514 of the city of Winnipeg be and the same is hereby quashed.

And it is further ordered that the said city of Winnipeg do pay to the said applicant, Alexander Logan, the costs of and incidental to the said rule and application forthwith after taxation by the master of this court.

By the Court.

G. H. WALKER,
Prothonotary.

Certified a true copy of the rule absolute issued at the above application.

G. H. WALKER,
Prothonotary.

No. 15.

Order granting leave to appeal to Her Majesty in Council, dated 15th January, 1892.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of Winnipeg.

Upon reading the petition of the city of Winnipeg presented in this matter praying for leave to appeal from the judgment of this court given on the 14th day of December last past, and the affidavit filed in support thereof, and upon hearing counsel for all parties;

It is ordered that upon payment into this court to the credit of this matter of the sum of 2,000 dollars as security, that the city of Winnipeg will effectually prosecute this appeal, the said city be at liberty to appeal from the said judgment to her most excellent majesty the queen in council; and pending this motion the said sum of 2,000 dollars has been paid into this court in this matter by the city of Winnipeg.

It is further ordered that the same be taken as such security and that the said appeal of the city of Winnipeg to her most excellent majesty the queen in council be and the same is hereby allowed.

Dated at the city of Winnipeg this 15th day of January, A.D. 1892.

By the Court.

AUGUSTUS MILLS,
Deputy Prothonotary.

Certified a true copy of the rule absolute issued on the above application.

G. H. WALKER,
Prothonotary.

Manitoba School Acts.

No. 16.

Prothonotary's Certificate of Correctness of Transcript Record, dated 28th January, 1892.

In the Queen's Bench.

In the Matter of the Application to quash By-law 514 of the City of
Winnipeg.

I, Geoffrey Henry Walker, of the city of Winnipeg, in the province of Manitoba, prothonotary of the court of queen's bench for the province of Manitoba, do hereby certify that the foregoing copy of the rule *nisi* herein and the foregoing copies of the affidavits of Daniel Coyle, the Most Reverend Robert Machray, Alexander Logan, Robert Henry Hayward, Alexander Polson, George Bryce, Edmund M. Wood, Thomas Dickey Cumberland, and Hector Mansfield Howell are true copies of the said rule *nisi* herein and of the affidavits of which they purport to be copies.

And I do further certify that the foregoing paper marked "A" attached to the copy of the affidavit of Alexander Logan is a true copy of the exhibit "A" to the said original affidavit of the said Alexander Logan being a certified copy of by-law 514 of the city of Winnipeg.

I do also certify that the pamphlet attached to the copy of the affidavit of Robert Henry Hayward is a true copy of the exhibit "B" to the affidavit of the said Robert Henry Hayward.

And I do further certify that the foregoing copies of the reasons for judgment of the honourable the chief justice of this court and of the Honourable Mr. Justice Bain are true copies of the said reasons for judgments, respectively, and that the foregoing copies of the rule absolute to quash the by-law and of the rule absolute allowing an appeal herein to her most excellent majesty the queen in council are true copies of the original rules absolute issued herein, and that the rules, affidavits, exhibits and reasons for judgments, above referred to, are the only rules, affidavits, exhibits, or other material or reasons for judgments made, filed or given in connection with the said application and constitute the complete record of all the proceedings upon said application.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court of queen's bench for the province of Manitoba, this 28th day of January, A.D. 1892.

G. H. WALKER,

Prothonotary.